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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PETITIONER,

vs.

ALABAMA EX REL. RICHMOND M. FLOWERS, ATTORNEY GENERAL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MAY 29, 1963
CERTIORARI GRANTED OCTOBER 14, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PETITIONER,

vs.

ALABAMA EX REL. RICHMOND M. FLOWERS, ATTORNEY GENERAL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

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[fol. 2]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

IN EQUITY

#30468

STATE OF ALABAMA, on the relation of JOHN PATTERSON, Attorney General of the State of Alabama, Complainant,

VS.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, Respondent.

To the Honorable Judges of Said Court, in Equity Sitting:

The State of Alabama, on the relation of John Patterson, Attorney General of the State of Alabama, respectfully represents unto your Honors as follows:

1. The Complainant, John Patterson, is the duly qualified Attorney General of the State of Alabama, and as such brings this action in the name of and for the State of Alabama.

2. The Respondent, National Association for the Advancement of Colored People, is a New York Corporation with its home office at 20 West 40th Street, New York 18, New York; copies of the certificate of incorporation and the constitution of said respondent corporation are attached hereto and made a part hereof as Exhibits A and B.

3. Respondent maintains its Southeastern Regional Office at 1630 4th Avenue North, Birmingham, Alabama, with the telephone number of said office listed in the telephone directory of the City of Birmingham, Alabama. Photographs of the door and the directory in said building are hereto attached and marked Exhibits C and D.

4. Respondent maintains an office bearing its name upon the door thereof in the Masonic Temple Building, Birming-

ham, Alabama, with a telephone number for that office listed in the telephone directory of the City of Birmingham.

5. Respondent has hired and still employs both agents and servants to operate its offices maintained in Birmingham, Alabama, as described in paragraphs 3 and 4 above of this bill of complaint.

6. Local chapters of said respondent corporation are organized in the State of Alabama and the County of Montgomery for the purposes set forth in respondent's certificate of incorporation attached hereto and made a part hereof as Exhibit A; and agents of respondent in the State of Alabama and County of Montgomery solicit membership, dues and contributions for said local chapters and the parent corporation.

[fol. 3] 7. Respondent has employed or otherwise paid money to one Arthurine Lucy and one Polly Meyers Hudson, members of the Negro race to encourage and aid them to enroll as students in the University of the State of Alabama to test the policy of that institution in denying entrance as a student to persons of the Negro race.

8. Respondent has furnished legal counsel, namely, Arthur Shores of Birmingham, an attorney admitted to practice in the State of Alabama, Thurgood Marshall, an executive officer of the Respondent corporation, and one Constance Baker Motley of Washington, D. C., a member of the National Association for the Advancement of Colored People, Legal Defense and Educational Fund, to represent said Arthurine Lucy in her proceedings against the officials and trustees of the University of Alabama in the Federal District Court for the Northern District of Alabama, to obtain admission as a student to that University.

9. Respondent has by its members and agents engaged in organizing, supporting and financing an illegal boycott by Negro residents of Montgomery, Alabama, to compel the Capital Motor Lines, a common carrier operating solely within the City and County of Montgomery, to integrate the seating arrangements in the omnibuses of said Capital Motor Lines so as to seat passengers thereon without ref-

erence to their race in contravention of a valid ordinance of the City of Montgomery, Alabama, enacted in the exercise of its police power.

10. Respondent's officers, agents, employees and members, have for years past and are presently engaged in organizing chapters of respondent's corporation in Alabama, and in Montgomery County, collecting dues therefor, soliciting contributions and expending monies, loaning personal property and giving personal property to be used to advance the aims and purposes of said respondent corporation as set forth in its certificate of incorporation.

11. Respondent corporation has never filed with the Secretary of State of Alabama a certified copy of its articles of incorporation and an instrument in writing under seal of the corporation, designating a place of business in this State, and an authorized agent residing within the State as required by Sections 192, 193 and 194 of Title 10, Code of Alabama 1940, as evidenced by certificate of the Secretary of State of Alabama attached hereto as Exhibit E.

12. Respondent corporation has been and continues to do business in the State of Alabama and in the County of Montgomery in violation of Article 12, Section 232, Constitution of Alabama 1901, and Section 194 of Title 10, Code of Alabama 1940.

[fol. 4] 13. The acts of Respondent and its continuing to do business within this State to carry out the purposes outlined in its Certificate of Incorporation without first having complied with the provisions of Section 232, Constitution of Alabama 1901, and Sections 192, 193 and 194 of Title 10, Code of Alabama 1940, are causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama for which criminal prosecution and civil actions at law afford no adequate relief to prevent such continuing unlawful and harmful conduct by respondent.

Wherefore, Premises Considered, Your complainant prays:

1. That this Court will take jurisdiction of this bill of complaint and cause proper process to issue to the Respondent herein, requiring them to plead, answer or demur

within the time required by law, or else suffer a decree pro confesso.

2. That this Court issue a temporary injunction enjoining and restraining the above named respondent, its servants, agents and employees from further conducting its business within the State of Alabama; and further enjoin said Respondent from organizing further chapters within the State of Alabama; to dissolve all chapters of its organization hitherto organized within the State of Alabama; and further to enjoin its maintaining any office within the State of Alabama.

3. That upon a final hearing, the Court will issue a permanent injunction in accordance with the foregoing prayer for a temporary injunction, and in addition enter an order ousting the respondent corporation, National Association for the Advancement of Colored People, from organizing or controlling any chapters of the National Association for the Advancement of Colored People in this State, and from exercising any of its corporate functions in the State of Alabama.

4. And Your Complainant prays for such other, further and different relief as may be meet and just in the premises and as to which he is in equity and good conscience entitled.

John Patterson, Attorney General of the State of Alabama.

[fol. 5] *Duly sworn to by John Patterson, jurat omitted in printing.*

[fol. 18]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DECREE FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION. —June 1, 1956

This cause, being submitted to the Court upon application of the complainant duly verified as required by law for a temporary restraining order and injunction as prayed for in the original complaint filed in this cause and upon consideration thereof and of the evidence offered in support thereof in the form of sworn petition and exhibits attached thereto, and the State not having elected to give bond, the Court is of the opinion same should be granted.

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the respondent, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, and all persons having notice of this order, be, and they hereby are, restrained and enjoined until further orders of the Court from:

1. Conducting any further business of any description or kind of respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any offices of respondent within the State of Alabama.

2. Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

3. Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

4. Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

5. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application,

paper or document for the purpose of qualifying to do business within the State of Alabama.

It Is Further Ordered, Adjudged and Decreed that the Sheriff of Montgomery County, Alabama, or any other lawful officer of the State of Alabama, serve a copy of the petition and this order upon the respondent by service thereof upon any officer, agent or servant of respondent found within the State of Alabama.

Done at Montgomery, Alabama, this the 1 day of June, 1956.

Walter B. Jones, Circuit Judge.

Filed 1st day of June, 1956.

[fol. 32]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANSWER

Comes the Respondent in the above styled cause and for Answer to the Bill of Complaint heretofore filed in said cause, states as follows:

1. Respondent neither admits nor denies the Allegations of Paragraph One of said Bill of Complaint.

2. Respondent admits the allegations of Paragraph Two of said Bill of Complaint.

3. Respondent admits the allegations of Paragraph Three of said Bill of Complaint.

4. Respondent admits the allegations of Paragraph Four of said Bill of Complaint.

[fol. 33] 5. Respondent admits the allegations of Paragraph Five of said Bill of Complaint.

6. Respondent denies the allegations of Paragraph Six of said Bill of Complaint.

7. Respondent denies the allegations of Paragraph Seven of said Bill of Complaint.

8. Respondent admits the allegations of Paragraph Eight of said Bill of Complaint.

9. Respondent admits that it has given moral and financial support to the Negro residents of Montgomery in connection with their refusal to use the public transportation system of the City, and has furnished legal counsel to assist in the defense of Rev. M. L. King and other Negroes indicted in connection with this matter, but denies all other allegations and inferences contained in paragraph Nine (9) of the complaint concerning its activities. Respondent further denies that the alleged boycott was illegal and denies that the ordinances of the City of Montgomery and the statutes of the State of Alabama requiring segregation of the races on intrastate carriers are valid.

10. Respondent denies the allegations of Paragraph Ten of said Bill of Complaint.

11. Respondent admits that it has never filed with the Secretary of State of Alabama its articles of incorporation; nor designated a place of business within the State or an authorized agent residing within the State, but respondent denies that it is required by Sections 192, 193 and 194, Title 10, Code of Alabama, 1940, to do so.

12. Respondent denies paragraph Twelve and alleges that these allegations are mere conclusions of law.

13. Respondent denies the allegations of Paragraph Thirteen of said Bill of Complaint.

And for further Answer Respondent files the following Defense:

First Defense

Respondent is a New York corporation whose principal object and activity has been the promotion of equal rights and the eradication of caste distinctions founded upon race or color in the United States. Respondent is dedicated to the democratic way of life and has pursued its objectives openly, through the courts, and through other channels of our democratic society.

Residents of Alabama hold membership in the respondent corporation. These memberships are New York contracts which come into being only upon acceptance at the offices of respondent in New York. In addition, residents may hold [fol. 34] membership in Branches of the National Association for the Advancement of Colored People in Alabama.

These Branches are independent unincorporated associations within the State of Alabama known as Branches of the National Association for the Advancement of Colored People. These Associations hold charters granted to them by respondent which permit them to use the respondent's name. Respondent has no control over who the officers of these associations shall be, and these associations are explicitly without power to incur any obligation on the part of respondent. Each branch has its own officers and governing body and determines for itself its own program which is carried out by the members and agents designated by its governing body.

There is a Conference of Branches of said unincorporated associations organized by themselves within the State of Alabama, bearing the name of the Alabama State Conference of N.A.A.C.P. Branches. Its officers and operation are directed wholly within the State of Alabama, and respondent has no control thereover.

These unincorporated associations and the respondent hold an annual meeting at various pre-selected sites in the United States. At the annual meeting held in Atlanta, Georgia, in 1951, it was decided to establish a Southeast Regional Office to give better service and guidance to branches operating in Alabama, Georgia, Florida, Mississippi, North Carolina, South Carolina and Tennessee. This office was opened in April 1951 in Birmingham, Alabama, and respondent employed Ruby Hurley as Southeast Regional Secretary to run this office. Mrs. Hurley exercises no administrative or executive control over any branches or officers in Alabama or in any state. Mrs. Hurley's chief function is to disseminate information to branches and the public in general concerning the enforcement of the constitutional rights of Negroes, and to give guidance and assistance to Branches in devising means to secure community compliance with the mandate of the Federal Constitution.

W. C. Patton. is employed by respondent and operates within the State of Alabama to interest persons in taking an active part in the effort to secure constitutional rights of Negroes and to otherwise advance the colored race.

The corporation owns no property within the State of Alabama. The contacts which the corporation has with residents of the State of Alabama consist entirely of interstate commerce in the form of mail, long distance calls and visits by persons travelling in interstate commerce.

Respondent does not do business within the State of Alabama. Such contacts as respondent has with the State do not constitute doing business in any sense that could make respondent subject to Sections 192, 193 and 194 of Title 10, [fol. 35] Code of Alabama, 1940, without violating respondent's rights to due process of law as secured by the Fourteenth Amendment to the Constitution of the United States. Such activities are specifically exempt from coverage by Section 198 of Title 10, Code of Alabama, 1940, and such activities are protected by the United States Constitution from state interference in that these activities constitute interstate commerce within the meaning of Article I, Section 8 of the Federal Constitution and are within the protection of the First Amendment as constituting freedom of speech and within the protection of the Fourteenth Amendment as constituting the right to petition for redress of grievances. To hold respondent subject to the provisions of Sections 192, 193 and 194 of Title 10, Code of Alabama, 1940, and to penalize respondent for failure to comply with these provisions therefor, would constitute a denial of due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Second Defense

For its second defense respondent repeats and realleges all facts contained in its first defense and says further:

If respondent is held subject to the provisions of Sections 192, 193 and 194 of Title 10, Code of Alabama, 1940, the relief sought in the complainant's bill and granted in the temporary injunction ordered issued by this Court is im-

proper insofar as it operates or would operate to restrain persons having notice of order but subject to no control by respondent from operating as an unincorporated association within the State of Alabama bearing respondent's name.

Third Defense

For its third defense, respondent repeats and realleges all the facts contained in its first and second defenses and says further:

The state is barred by laches from securing equitable relief sought in the complaint. Branches of the National Association for the Advancement of Colored People have existed and operated in Alabama since 1918. The first Branches being organized in this State in that year were in Montgomery and Selma. Respondent has provided legal counsel and assistance to Alabama Negroes seeking vindication of their constitutional rights on a regular basis since 1932 when a full-time legal staff was employed in the respondent's New York office. Respondent opened its Southeast Regional Office in Birmingham in April 1951, and has operated same openly and continuously since that time. In fact, with the exception of the Southeast Regional Office, respondent's relations to and activities in respect to Alabama have been the same since 1918. During all of this [fol. 36] period, the State has known of respondent's activities; respondent's lawyers have represented Alabama Negroes in litigation defended by the State, yet no action was taken. Now the State cannot complain after all these years of the need for equitable relief.

Fourth Defense

For its fourth defense, respondent repeats and realleges all the facts contained in its first, second and third defenses and says further:

It is clear from the complaint that to complainant the injury it conceives the respondent has committed is not its failure to register, but its activities to secure an end to segregation and discrimination against Negroes in compli-

ance with the Constitution and laws of the United States. In short, complainant seeks to prohibit citizens in Alabama from pursuing the rights to which they are entitled in concert with the National Association for the Advancement of Colored People. To prohibit lawful activities of this nature constitutes a denial of freedom of speech, freedom of assembly, due process of law, equal protection of the laws and would constitute a deprivation of the constitution privileges and immunities of United States citizenship.

Fifth Defense

For its fifth defense, respondent repeats and realleges all the facts contained in its first, second, third and fourth defenses and says further:

Because of these facts, particularly those contained in respondent's first defense, respondent believed in good faith and still believes that it is not subject to the requirements of Sections 192, 193 and 194 of Title 10, Code of Alabama, 1940. Until June 2, 1956, or thereabout, when respondent was notified that a temporary restraining order had been issued against it, it had no notice from any source that any duly constituted official of the State of Alabama believed that respondent was required by the aforesaid statute to register or believed that it was engaged in any activities within the State of Alabama in violation of the laws of this State.

Respondent is a law-abiding organization and intends to comply with every law of the United States and of every state, including the State of Alabama, which do not require the surrender of Constitutional rights. While respondent does not believe that Sections 192, 193 and 194 are applicable to it, it procured the necessary forms from the office of the Secretary of State, Montgomery, Alabama, has filled in the forms as required by law and offers to file same. Said forms are herein attached to this Answer and respondent will file the same if the Court will dissolve its order barring respondent from seeking to register and will per-
[fol. 37] mit respondent to file these forms.

Further, respondent seeks an adjudication of this matter at an early hearing, and asserts its intention to comply

with the law if the decision is that Sections 192, 193 and 194, Title 10, Code of Alabama 1940, are applicable to respondent and that its compliance with these statutes would not violate its constitutional rights.

Because of the foregoing facts and the respondent's continuing good faith and because the complainant has an adequate remedy at law, under the provisions of Sections 192, 193 and 194 of Title 10, Code of Alabama, 1940, a court of equity should not grant the extraordinary and drastic relief sought by complainant in this action.

Sixth Defense

For a sixth defense, respondent repeats and realleges all the facts contained in its first, second, third, fourth and fifth defenses and says further:

Even if respondent is in fact in violation of Alabama law by its failure to register and to designate a place of business by filing the requisite information with the Secretary of State, such violation was at best a technical one. The State of Alabama knew at all times the location of the one and only office respondent maintains in the State of Alabama, as is demonstrated by paragraph 3 of the complaint, and respondent never sought to avoid nor has it avoided services of process or any other obligation placed upon it by the laws of the State of Alabama.

Further, respondent alleges that no injury has resulted to the State nor to its citizens from respondent's failure to register. Hence, respondent's act, even if in violation of the law, has caused no injuries, irreparable or otherwise, to the State of Alabama or to its citizens, and the requisite jurisdiction and equity is lacking, therefore, to grant the relief which complainant seeks.

Seventh Defense

For a seventh defense, respondent repeats and realleges all the facts contained in its first, second, third, fourth, fifth and sixth defenses and says further:

Complainant is not acting in good faith in this proceeding. Although the Attorney General was in correspondence with

the respondent (copies of his letters are attached hereto), at no time did he or any of his agents suggest or give notice to respondent that it was acting in violation of the state's law. Indeed, the very manner in which the injunction was secured gives evidence of this, in that suddenly without notice or giving opportunity for respondent to decide whether to comply with the state's laws in respect to regis- [fol. 38] tration, complainant procured an injunction against respondent ex parte. The Attorney General's real purpose is to seek to bar Negroes in the State from seeking to secure their constitutional rights and legal rights, and it is hoped that the purpose will be served by barring respondent from the State. No injury has been suffered by respondent's activities to complainant, and complainant's bringing this action against respondent without giving respondent notice or opportunity to comply with Title 10 constitutes a denial to respondent of due process of law and equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

Arthur D. Shores, Fred D. Gray, Robert L. Carter,
By: Arthur D. Shores, Fred D. Gray, Solicitors
for Respondent.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CERTIFICATE DESIGNATING AGENT AND PLACE OF BUSINESS IN ALABAMA FOR FILING IN OFFICE OF SECRETARY OF STATE OF ALABAMA—Filed July 20, 1956

Office of National Association for the Advancement of Colored People located at 20 West 40th Street, New York 18, New York.

In compliance with provisions of Section 192, Title 10, of the Code of Alabama 1940, and Section 232 of the Constitution of Alabama, 1901, National Association for the Advancement of Colored People a corporation or association organized under the laws of the State of New York and having its principal place of business at 20 West 40th Street in the City of New York State of New York herewith files

a certified copy of its articles of incorporation or association under the laws of said State of New York and designates as its known place of business in the State of Alabama, 1630 Fourth Ave. No. in the city of Birmingham County of Jefferson, and as its authorized agent thereat, Mrs. Ruby Hurley on whom, as said agent, service of process may be made and all legal notices served, for all the purposes contemplated by the laws of the State of Alabama.

In Witness Whereof, the said corporation or association [fol. 39] has caused these presents to be signed by its President and Secretary, and attested by its corporate seal, at its office in New York this ..... day of June 1956.

Arthur B. Spingarn, President.
Roy Wilkins, Executive Secretary.

(Seal)

Note—The fee for filing above certificate is $10.00, as provided in Section 192 of Title 10 of the Code.

* * * * * * *

[fol. 135]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDMENT TO COMPLAINT—Filed December 13, 1961

Now comes Complainant and with leave of court first had and obtained amends its complaint in this cause under the provisions of Equity Rule 38(2) by adding the following additional paragraph and additional prayer as hereinafter shown.

Paragraph 14.

Complainant avers that in addition to Respondent's failure to qualify to do business within this State as above herein alleged, it has, through its agents, servants, employees, or attorneys duly authorized, committed the following acts:

A. Through press, radio, television, and statements initiated in Respondent's regional office, Birmingham, Alabama, and pleadings or motions filed in Federal

Court, falsely charged agents of the State of Alabama and trustees of the University of Alabama with acts which would appear to constitute a violation of the criminal conspiracy statutes of the State of Alabama, statutes against riots and mobs, and conspiracy in violation of the Federal criminal statutes, Title 18 U.S. C.A., Section 241, all as found by Federal District Judge Grooms on January 24, 1957 in the case of *Lucy, et al.* v. *Adams, et al.*, United States District Court, Northern District of Alabama.

B. Has falsely charged the Attorney General of Alabama, the Alabama courts and the State judiciary with arbitrary, vindictive, and collusive proceedings brought and conducted with an alleged determination on their part to prevent Respondent from contesting Respondent's ouster from the State before an impartial judicial forum; has falsely charged that the State Circuit Court and Supreme Court of Alabama have deliberately withheld and denied to Respondent access to the courts in the State for a hearing on the merits of this case.

C. Has falsely charged the State of Alabama and its Attorney General with filing the contempt proceedings in this case on April 9, 1958, knowing the allegations therein to be false, Respondent stating that the Attorney General acting for the State of Alabama made [fol. 136] the contempt charges "even though defendant, the present Attorney General and his predecessor in office well know that plaintiff has carried on no organizational activities in Alabama."

D. Has willfully violated the restraining order issued in this case on June 1, 1956 by continuing to carry on activities in the State by and through the Alabama State Coordinating Association for Registration and Voting and by other means known to W. C. Patton, W. P. Mitchell, and Roy Wilkins as officers or employees or agents of Respondent and by its Attorneys.

E. Did, so Complainant is informed and believes, and on such information and belief alleges, when Alabama

went to meet Penn State in the Liberty Bowl three Decembers ago, seek to pressure first, the mayor of Philadelphia, then the Governor of Pennsylvania, finally, the Penn State players into a boycott of the Alabama football team.

F. Has encouraged, aided, and abetted the unlawful breach of the peace in many cities in Alabama for the purpose of gaining national notoriety and attention to enable it to raise funds under a false claim that it is for the protection of alleged constitutional rights.

G. Has encouraged, aided, and abetted a course of conduct within the State of Alabama, seeking to deny to the citizens of Alabama the constitutional right to voluntarily segregate.

Complainant avers that the said conduct, procedure, false allegations, and methods used by Respondent render totally unacceptable to the State of Alabama and its people the said Respondent corporation and the activities and business it transacts in this State.

Wherefo.. Complainant additionally prays that Respondent corporation be forever barred and enjoined from any further business dealings or activity of any kind intrastate in character within the State of Alabama, and that upon the final hearing, a decree of ouster from this State be enrolled.

Respectfully submitted,

MacDonald Gallion, Attorney General of Alabama,
Attorney for Complainant.

[fol. 137]
IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION TO STRIKE AMENDED COMPLAINT AND ANSWER—Filed December 19, 1961

Now Comes the respondent in the above styled cause, and respectfully moves the Court to Strike the Amendment to the Complaint, in this cause, designated Paragraph 14, and each separate allegation thereof, and as grounds for said Motion alleges the following, Separately and severally:

1. That said Paragraph, and each Allegation thereof, are irrevelant.

2. That said Paragraph is frivolous.

3. That said Paragraph is inconsistent with, and a departure from the original cause of action.

And for further Answer, without waiving the foregoing Motion, Respondent denies each and every Allegation of Paragraph 14, to the said Amended Bill of Complaint.

Fred D. Gray, Robert L. Carter, Frank D. Reeves, Orzell Billingsley, Jr., Peter A. Hall, Arthur D. Shores, By Arthur D. Shores, Attorneys for Respondent.

[fol. 151]
IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDMENT TO COMPLAINT—Filed December 27, 1961

Complainant with leave of Court first had and obtained amends the complaint by placing a period after the word "race" in line nine of paragraph nine and by striking the rest of the sentence, namely "in contravention of a valid ordinance of the City of Montgomery, Alabama, enacted in the exercise of its police power."

[fol. 152] MacDonald Gallion, Attorney General of Alabama, Attorney for Complainant.

[fol. 318]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

IN EQUITY

Case No. 30468

STATE OF ALABAMA ON THE RELATION OF MACDONALD GALLION, ATTORNEY GENERAL OF THE STATE OF ALABAMA, Complainant,

vs.

THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, Respondent.

Transcript of Pre-Trial Hearing, December 13, 1961

Before: Hon. Walter B. Jones, Circuit Judge Presiding, at the Montgomery County Court House, Montgomery, Alabama, Wednesday, December 13th, 1961.

APPEARANCES:

For the State of Alabama: Hon. MacDonald Gallion, Attorney General of the State of Alabama. Gordon Madison, Esq., Asst. Attorney General of the State of Alabama. William N. McQueen, Asst. Attorney General of the State of Alabama.

For the Respondent: Robert L. Carter, Esq., New York, N. Y., Fred D. Gray, Esq., Montgomery, Alabama, Arthur D. Shores, Esq., Birmingham, Alabama, Peter Hall, Esq., Birmingham, Alabama, Orzelle Billingsley, Jr., Esq., Birmingham, Alabama.

[fol. 319]

COLLOQUY RE ADMISSIONS OF BOTH PARTIES TO CERTAIN DOCUMENTS

Asst Attorney General Madison: One of the purposes of this pre-trial proceeding is to get admissions of both parties with reference to certain documents which may be material for either side as far as that is concerned, subject to any

legal objections that might be offered on the trial on the merits. Now, we have here the Record which was transcribed on appeal to the Fifth Circuit Court of Appeals, No. 18576 and in that there are certain documents and I would like to get an agreement if we can that this is the Record and that either side may use such of these documents as appear herein which may be material in the case subject to legal objections which may be offered by either side and it may be available to either side for such use as they may wish.

Attorney Carter: I don't understand. We have a Record which is a Record of this Court.

Asst. Attorney General Madison: I will show you the Record I am speaking of.

Attorney Carter: I know what you are talking about.

The Court: Well, if that can be used, it will save the necessity of getting certified copies and all that, wouldn't it?

Asst. Attorney General Madison: That is correct, Your Honor.

Attorney Carter: Now, we had a Record in this Court. This includes some matters which are of record in this Court in a complaint which was filed in the Federal Court. Now, the only thing in addition to that that I can recall and matters which are not of record in this Court is the complaint which was filed in the Federal Court which is here. Now, I don't know what—

The Court: Let me see it.

Asst. Attorney General Madison: Here it is, Your Honor.

Attorney Carter: And the memorandum of Judge Johnson, as I recall.

The Court: Now, as I understand it, you offer it for the purpose of anything in here which may be relevant and material and if they object to it, they have a right to take an exception. Is that right?

[fol. 320] Asst. Attorney General Madison: Yes, sir. That's right. For instance, complaints that you referred to—we can get certified copies of the complaints that might be material in the trial of the case—

Attorney Carter: Well, we will certainly agree that that document is the Record which was filed in the Circuit Court of Appeals of the United States for the Fifth Circuit. We

will also agree that you can file anything in it that you care to.

Asst. Attorney General Madison: Now, will you agree that we may use anything in that in evidence on the trial of this case subject to legal objection in lieu of the original?

The Court: In other words, instead of going to the Federal Court to get the original record, this can be used as the record of it.

Asst. Attorney General Madison: That's right—

Attorney Carter: No. I will not agree to that.

Asst. Attorney General Madison: Mr. Reporter, read back what we have agreed to.

The Court: Do you want to mark this transcript as some kind of an exhibit and give it a number so we will know what it is?

Asst. Attorney General Madison: Does Your Honor have any preference as to numbering?

The Court: No.

Asst. Attorney General Madison: Mark it as State's Exhibit No. 1 then, Mr. Reporter.

(Transcript of Record, United States Court of Appeals, Fifth Circuit No. 18576, regarding the National Association for the Advancement of Colored People, Appellant, versus MacDonald Gallion, Attorney General of Alabama and Mrs. Betty Frink, Secretary of State, State of Alabama, Appellees, Appeal from the United States District Court of the Middle District of Alabama, filed in the U.S. Court of Appeals, October 20, 1960, Edward W. Wadsworth, Clerk, consisting of a printed Record of 162 pages, offered for identification and received in evidence and identified as Complainant's Exhibit No. 1.)

[fol. 321] The Reporter: Now, what is it you want read?

Asst. Attorney General Madison: Read back what Carter just said.

The Court: I take it, that is offered under Rule 38 to obtain admission of documents and to avoid unnecessary proof.

Asst. Attorney General Madison: That's correct, Your Honor.

The Reporter: (Reading) "Well, we will certainly agree that that document is the Record which was filed in the Circuit Court of Appeals of the United States for the Fifth Circuit. We will also agree that you can file anything in it that you care to."

Attorney Gray: With the understanding that the material will have to be relevant to the issues in this case—

The Court: Well, we will not let anything in that is not relevant.

Asst. Attorney General Madison: We are not doing it for that purpose. Now, do I understand—

The Reporter: May I have your name for the Record, sir?

Asst. Attorney General Madison: Gordon Madison, Assistant Attorney General of Alabama. Now, do I understand by that that the complaint which was filed in the Federal Court—that this will stand as a substitute for that complaint or will you require us to get a certified copy?

Attorney Carter: Let me put it this way. Some of the material that was filed as a part of this Record was already in the Record,—

Asst. Attorney General Madison: Well, we already have the Record. Just get down to the complaint you filed.

Attorney Carter: I will be able to explain everything if you will let me—

The Court: Move over here. I can't hear you over there.

Attorney Carter: Can you hear me now?

The Court: Yes.

Attorney Carter: Some of the material which was filed and made a part of this Record is already in the Record in [fol. 322] this case. Now, the complaint, or any additional material which is not of record in this case, I am agreeable for you to use for any purpose that is considered relevant, but I hesitate on the issue of whether you can file it instead of the original because some of these materials are merely copies of what is in the Record—

Asst. Attorney General Madison: Well, insofar as what appears in this Record here that is not already in the Record here in the Court Room, can we use that Record right there in lieu of the original?

Attorney Carter: Yes.

Attorney Gray: If it is relevant and material—

Attorney Carter: Yes. Of course, that goes without saying.

Asst. Attorney General Madison: Now, next, Your Honor, we have this report and I don't know whether this case has ever been reported or not. You may know but—and each of these things that I am asking you to agree to, if you will, is subject to any legal objection, of course, that you might have or that anybody might have on either side for that matter if it is offered by your side if we agree to it, but now that is when it is offered. I am not trying to get it in without legal objections. I am just merely trying to save the bringing in of certified copies if we can do so. Now, this is the case of Autherine Lucy versus Adams reported in the Race Relations Reporter. I don't know whether it has ever been reported in the books or not. If it has, I haven't found it.

Attorney Carter: Now, what are you asking?

Asst. Attorney General Madison: That we may use that opinion in lieu of the original for a certified copy of the original and we will have to send to Birmingham to get it.

Attorney Carter: No. We won't agree to that.

Attorney Gray: I was about to suggest to the Court and Mr. Madison that instead of going through and letting you get through all of your admissions, first, we should alternate. You ask us for an admission and we ask you for an admission instead of letting you proceed all the way through before we get a chance to ask you about admissions.

[fol. 323] Asst. Attorney General Madison: Well, Your Honor, we are the movants and—

The Court: Yes. You would have the first opportunity and then the other side can go ahead.

Asst. Attorney General Madison: I will state this for the Record, Your Honor. I am certainly not trying to gain any advantage over anybody here in the trial of the case. I am trying to save some time. Now, when we get to the merits, that's going to be something else. We are going to be at arms length.

The Court: All right. Go ahead.

Asst. Attorney General Madison: Now, can we get an

admission as to what states other than the State of Alabama that the NAACP has qualified to do business in?

Attorney Carter: No.

Asst. Attorney General Madison: Can we get a statement in agreement that the NAACP is qualified to do business in the State of Virginia?

Attorney Carter: Our position on that is that we don't regard the question now or the preceding question to this question as relevant to any issue in this case at all. We will not make any admissions about anything that we do not regard as relevant.

The Court: Well, indicate for the Record, no admission on that, Mr. Reporter.

Asst. Attorney General Madison: This is a copy of an opinion reported in 202 Va., 142. It is dated September 2nd, 1960.

Attorney Shores: What is the citation?

Attorney Carter: I have that citation.

Asst. Attorney General Madison: Can we agree that the general business activities of the respondent, NAACP, as set forth in that opinion are the same character as those conducted in the State of Alabama?

Attorney Carter: Oh, no. Of course not.

Asst. Attorney General Madison: Now, before, there was a motion to produce and there has been some considerable [fol. 324] controversy over the motion to produce. It has a history in the books now. Now, whatever was produced,— I was not here in any of those proceedings and you might say that I in a measure, along with some of the others present here today, have inherited the case and therefore I don't know all about what took place on the Motion to Produce. I see where certain records were offered—

The Court: Now, which one of the cases was that in?

Asst. Attorney General Madison: That was in this very case we are dealing with now.

The Court: On a former day of the term?

Asst. Attorney General Madison: That's right. However, Your Honor, I cannot find where the records are that were produced. I cannot find any records attached to some of the exhibits in the case which they referred to as having records or copies of records attached to it, and I was won-

dering whether we could find out where those records are and what became of them which were produced in answer to the motion to produce.

Attorney Carter: Well, I wouldn't be able to tell you that. The records were tendered to the Court. You mean in answer to your motion to produce?

Asst. Attorney General Madison: That's right.

Attorney Carter: The records were tendered.

Asst. Attorney General Madison: Do you know what became of them? Do you know whether the Court took possession of them or did you ever get them back?

Attorney Carter: I have no idea what became of them.

Asst. Attorney General Madison: Do you remember, Fred?

Attorney Gray: I don't remember, to tell you the truth.

Asst. Attorney General Madison: Now, what other exhibits have we got there? Now, Your Honor, Mr. Hall will address the Court.

Asst. Attorney General Hall: If it please the Court, in connection with that particular transaction and from what I could find in the Court files, there was attached to the motion to set aside or modify the restraining order a standard order of charter of the branches and also they admitted in their complaint that Ruby Hurley and W. C. Patton were [fol. 325] employed, and that's true, of course. Then, also there was a memorandum to the branches during the preceding months which you said you would tender but which I couldn't find in the file. Now, the NAACP admitted that they owned certain personal property in the regional office in Birmingham and they offered to produce two bills of sale but they were not there—

The Court: What kind of property?

Asst. Attorney General Hall: Personal property, Your Honor, with regard to desks, typewriters and things of that sort but they were not attached to the pleadings in the file and they stated that certain canceled checks and payroll checks were being tendered but they were not in the file that I examined.

The Court: Are any of those in your office, Mr. Jones?

The Register: I didn't know about it until this afternoon

and I haven't looked thoroughly but I don't recall having any.

Asst. Attorney General Hall: In addition to that, Your Honor, they stated that they would submit all papers, books, copies of letters, documents, agreements, correspondence and other memoranda pertaining to or between the organization received from and sent to the State of Alabama and those were not in the file that I examined.

The Court: You have looked through the Court files yourself, have you?

Asst. Attorney General Hall: Yes. I have but I couldn't find them.

Asst. Attorney General Madison: We were trying to ascertain, Your Honor, as to where they are—if they were produced, we are trying to find out where they are now as we will have to have them and if they have not been produced to see if we can save the necessity of having another order to produce for this proceeding.

Attorney Carter: Well, let me say this. Now, this was in July of 1956. As I recall it, we filed an affidavit that you are now reading from, an affidavit and an answer, in which we, among the things that you requested us to produce—we offered to produce them and attach them to the affidavit. We had a hearing before Judge Jones I think, at the time [fol. 326] and we were asking him to dissolve his restraining order at the time and with the affidavits we filed those papers. Now, I couldn't tell you where they are. I have no idea where they are.

Asst. Attorney General Madison: Well, there is no evidence in the file that they have been filed. Of course, we are just trying to locate where they are.

Attorney Carter: Well, I—

Asst. Attorney General Madison: It may be necessary for us to have another order to produce if they are not here.

Attorney Gray: Now, Your Honor, at that time we produced substantially everything they asked for except the membership books and we produced it and we made them available to them and the Record is there. I don't think they require another order to do that. I don't think we are responsible to determine where those records are now.

The Court: Do you have a copy of those answers to the order to produce? Was that in the file? Would that shed any light on it?

Attorney Carter: Well, that's exactly what he was reading from—

The Court: Do you have it here?

Attorney Gray: In addition to that, Your Honor, in Open Court there were certain records—

Asst. Attorney General Madison: Well, we are entitled to them—

Attorney Carter: Well, I don't remember—

Attorney Gray: I certainly remember what happened—

Attorney Carter: Now, referring to paragraph 1 of the order, it says, "There is produced a copy of the charter which has been issued to fifty-eight branches in the State of Alabama. The respondent corporation is unable to produce a copy of each said charter since no copy was kept of charters by respondent," and so forth. Then it said—well, you have it. It is in the file. It indicated that we would not go through all of our correspondence because of the volume and the fact that would be a hardship. We own no real property. The bills of sale for personal property are in the possession of Mrs. Hurley and then we attached the [fol. 327] bills of sale which were in the possession of the respondent and there were two of them. You have those.

Asst. Attorney General Madison: Well, they are not here.

Attorney Carter: I have no responsibility for that. I have no responsibility for that at all.

Asst. Attorney General Madison: Well, in the event that they have been lost or misplaced either by us or by somebody else, can they be reproduced?

Attorney Carter: Why, in the light of that, I certainly would try to. I have no—we agreed to produce it and if you don't have it and we can find it, we would be perfectly willing to do it.

Asst. Attorney General Madison: I don't know whether they have ever come into our possession or not. It would be part of the Court's records.

Attorney Carter: We produced them in Court either in one of the sessions in Chambers or in Open Court with this

answer, and so I don't know where they are but I certainly will try to go over that answer in order to find anything that we said we would give you.

Asst. Attorney General Madison: Now, what about—you said there were some exhibits referred to in the paper there that was attached as exhibits—

Asst. Attorney General Hall: That particular thing was referred to as being attached. The canceled checks and payroll checks with a copy of the lease and so forth and I couldn't find them.

Attorney Carter: The charter form that you found was a part of that answer so that what occurred was evidently that was in with the other things that were produced and were lost. They were all part of the one thing. They must have all been lost.

Asst. Attorney General Madison: I think it might be well, Your Honor, at this time to discuss what we have before us or what we will have before us on the 27th. As I understand it, the Supreme Court of the United States has ordered the Fifth Circuit Court of Appeals to remand the case to the District Court with the Records and I have just gotten a copy of the Fifth Circuit opinion dated December [fol. 328] 11th, 1961, and if I may, as it is short, I will read it. "On further consideration thereof, it is now ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby vacated and that this cause be and it is hereby remanded to the said District Court with directions to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2nd, 1962, the State of Alabama shall have accorded to Petitioner an opportunity to be heard on its motion to dissolve the State restraining order of June 1st, 1956 and upon the merits of the action in which said order was issued. Pending a final determination of all proceedings in the State action, the District Court is authorized to retain jurisdiction over the Federal action and to take such steps as may appear necessary and appropriate to insure a prompt disposition of all the issues involved in or connected with the State action." Now, in connection with that I might say that a few days ago notice was received and it might be material—when the Supreme Court

of Alabama remanded the case to this Court in its order in the last paragraph this appeared. "It is further considered and ordered by this Court that the temporary injunction heretofore issued by the Circuit Court in Equity remain in full force pending final determination of this cause on the merits." Now, what we are seeking to do and what we have asked Your Honor to do is to set the case for hearing on the merits on the 27th day of December, 1961, which it has been set for. If there are any other things which the other side wishes to take up in addition to that then they may address themselves to Your Honor now if they want to.

Attorney Gray: I think that the Court's opinion will show—in addition to the hearing of this matter on the merits there is a motion to dissolve the temporary injunction that is also before the Court.

The Court: Is that on the 27th too?

Attorney Gray: Now, we are insisting upon that being heard, Your Honor. Now, at this time, we will ask about our admissions.

Asst. Attorney General Madison: Do you want to take up what you just said about the motion? Do you want to [fol. 329] take up the motion and the merits on the 27th?

Attorney Gray: That's right. I think our motion to dissolve will have to be taken up before you can decide on the merits.

The Court: Was that a motion to dissolve the temporary restraining order of the Court in December '61?

Attorney Gray: That's right, Your Honor.

The Court: Well, we will get rid of that and then have the hearing on the merits.

Attorney Gray: Now, Your Honor, we would like to get the following admissions if we can from the Attorney General and that is that no similar action, that is, no action similar to this action has been brought against any other foreign corporation which has not filed to do business in the State of Alabama. Can the State admit that's true?

Attorney General Gallion: I will only admit that I haven't—

The Reporter: Let me have that again, sir. I can't hear you over there.

Attorney General Gallion: I will only admit that I haven't as long as I have been Attorney General.

Attorney Gray: Will you admit that according to the files in the office of the Attorney General which are in his custody that no such action has been brought against any other foreign corporation?

Asst. Attorney General Madison: Those files in the Attorney General's office, Your Honor, are just as voluminous and more so than those which the NAACP says it has in its possession and, therefore, we wouldn't be in a position to admit that.

Attorney Gray: All we are trying to do is to save time. I think we are entitled to know and we will just have to have all those records brought down here.

The Court: Well, all he can state is what happened during his term. He doesn't know what happened before he came into office.

Attorney Gray: Will you admit that there are other foreign corporations, Mr. Attorney General, that are doing business in Alabama and have not qualified to do business?

[fol. 330] Attorney General Gallion: Who are they?

Attorney Gray: I am asking if you will admit that?

Asst. Attorney General Madison: No.

Attorney Gray: You said, no?

Attorney Carter: Wait a minute. For the purpose of the previous answer, when did you come into office, Mr. Gallion?

Attorney General Gallion: January 20th, 1959.

Attorney Carter: To the present.

Attorney Gray: Will you admit that there are other nonprofit foreign corporations doing business in the State of Alabama which have not filed a petition requesting the right to do business in the State of Alabama?

Asst. Attorney General Madison: We don't know. They may or may not be.

Attorney Gray: Really, to facilitate the issues, will you admit that the real purpose of this action is to keep the NAACP from doing business in this state?

Asst. Attorney General Madison: I think the pleadings will speak for themselves and particularly the last prayer that we put on the amended complaint.

Attorney Gray: Will you admit it? Will you admit that the real reason for this action is to ouster them so that they can't permanently do business in this state? Will you admit it or won't you?

Attorney General Gallion: We will not admit it and we will rely on the pleadings. The pleadings speak for themselves.

Attorney Gray: Mr. Gallion, I believe you were Mr. Patterson's chief assistant during his administration when he was Attorney General. Will you admit that during that time that no similar action had been brought against any other foreign corporation as has been brought against this one. Will you admit that, Mr. Attorney General?

Attorney General Gallion: To the best of my recollection I will admit that during most of the time I was Chief Assistant Attorney General but I want to point out though that I did not serve Mr. Patterson for a full term. I resigned in 1958.

[fol. 331] Attorney Gray: Will you tell us for the Record, what periods of time you were with the—

Attorney General Gallion: From the time Mr. Patterson took office until November, 1958.

Attorney Gray: Mr. Gallion, have you served as Assistant Attorney General under any other Attorney General of the State?

Attorney General Gallion: Yes.

Attorney Gray: Who were they?

Attorney General Gallion: Under Mr. Carmichael and Mr. McQueen.

Attorney Gray: Will you admit that during your tenure of office under those Attorney Generals that no such action had been brought against any similar non-profit foreign corporation?

Attorney General Gallion: No. I wouldn't admit that because I was not in a position as Chief Assistant Attorney General and I was not fully informed as to what did take place.

Attorney Gray: What about either of the other two gentlemen?

Attorney General Gallion: No. I would not admit that. I would not have any recollection that any action was taken.

Asst. Attorney General Madison: Well, I call Your Honor's attention to the amendment and even the original prayer has it in it where it says, "Therefore, the complainant additionally prays that the respondent corporation be forever barred and enjoined from any further business dealings or activities within the State of Alabama and that upon a final hearing a decree of ouster from this State be enrolled." Well, Your Honor, that is the prayer and in this case there is what has been referred to as the second contempt proceeding in which it is alleged, in substance, that after Your Honor had enjoined the respondent from doing business in this State that they thereafter did continue to do business through some other name or some other corporation or in some other manner. That was while Mr. Patterson was Attorney General and what I referred to as a second contempt proceeding was filed. They may have had some preliminary hearing on it. I am not too familiar with what did take place but we are not insisting on that [fol. 332] second contempt proceeding except insofar as the evidence relating thereto bears on the question of whether this corporation's conduct in Alabama has been such that it should be ousted from this State.

Attorney Gray: We have nothing further.

Asst. Attorney General Madison: Well, Mr. Register, if you will look for those things we have been fussing around here about—

Attorney Carter: Excuse me. We do have another matter to take up when you are finished.

Asst. Attorney General Madison: Go ahead.

Attorney Carter: As Your Honor recalls, in June of 1958 on the hearing on what was alluded to as the second contempt that we filed a motion asking the Court to recuse itself on the basis of testimony that we adduced and so forth, and our motion was going to the fact that we contended that the Court had reached a prejudicial conclusion in respect to this and we felt that the Court was not impartial in this pleading. Now, as Your Honor recalls, evidence was adduced on that and it was denied. We would like to renew that motion in these present proceedings based upon the evidence which we adduced at that time and we

would like to renew that motion for the Record at this time.

The Court: Well, I think that evidence ought to be produced at this time and not when we get ready to go into the merits in the case. I think it would come very late at that time.

Attorney Carter: Well, the evidence is already in the Record. The evidence has already been taken, Your Honor has—

The Court: Is it the same evidence that was introduced before?

Attorney Carter: Yes, sir. You will recall, Your Honor, that you answered certain questions and there was a newspaper exhibit which was produced and other testimony. On the basis of that we want to renew our motion for your consideration in respect to whether the Court feels it is capable of an impartial hearing in this matter.

Asst. Attorney General Madison: I believe, Your Honor, there is a transcript of that proceeding. I have a transcript of it at the office but I understand that he wishes to use the same evidence that was produced then.

[fol. 333] Attorney Carter: That's right.

The Court: I will say this. At that time I believe certain questions were asked of the presiding Judge which he answered but on further study of the law, I doubt very seriously if you could prove your case by asking the presiding Judge if he was prejudiced and I think he is in the same position as a petit juror who brings in a verdict in that he can always support that verdict but he cannot testify against it and I think you will find a line of cases that applies the same thing to the Jury Commission if you are trying to prove that they did something that they ought not to do and you cannot put them on the stand and ask them to testify as it would have to be proved by other evidence.

Attorney Carter: Well, I want to be clear with the Court. This is a matter for the Court's determination. I am asking the Court—

The Court: Well, why not bring it up before you get to—first, you have the motion to dissolve—the motion to dissolve, the motion to recuse and then this—

Attorney Carter: You mean to bring it up on the 27th?

The Court: I would much prefer to get this motion to recuse out of the way. If I recused myself, there wouldn't be any point in going ahead with this.

Attorney Carter: I bring the motion now, if the Court please, for your consideration.

The Court: Well, I will be glad to have you introduce any evidence you want to.

Attorney Carter: Well, Your Honor, I am relying upon the evidence that was already taken in the hearing of June, 1958.

The Court: Do you have a copy of it?

Attorney Carter: Well, Your Honor, the Record is here in the Court.

Attorney Gray: I can have a copy of it here for you in ten minutes, Your Honor. I didn't bring it as I didn't think we would need it.

Asst. Attorney General Madison: I don't know whether that comes within a pre-trial conference proceeding or not, Your Honor.

[fol. 334] The Court: Well, I don't see any objection to going ahead and getting this matter out of the way. That ruling the other time would apply all the way down the line; wouldn't it?

Attorney Carter: I think so. The only point I wanted to make to the Court—I assume that you would make the same ruling but merely wanted to—

The Court: Well, let me stand pat on that ruling then.

Attorney Carter: I merely wanted to be sure that we had not—we renewed our motion to be sure that it is still alive and viable—

The Court: Oh, yes, on the same grounds and the Court denies it.

Attorney Carter: We take an exception, if the Court please.

The Court: Yes.

Attorney Shores: Your Honor, we will have to file an answer to the amendment and how long will—

The Reporter: Will you identify yourself for the Record, please?

Attorney Shores: I am Arthur Shores.

The Court: Well, would you like to dictate that here in Open Court?

Attorney Shores: Well, Your Honor, we think—

The Court: How many days would you need to file an answer to the amended complaint? I will give you whatever is reasonable. Today is the 13th.

Attorney Shores: Could we file them on the day we come to Court? Could we file them on December 27th?

The Court: Well, if it is all right with the State, it is all right with me but they may want time to see the answer before they go to Court.

Attorney General Gallion: We would want at least a few days, Your Honor.

The Court: Well, suppose you take a week then and that will give them a week for whatever they want to do.

[fol. 335] Attorney Carter: The 20th, Your Honor?

The Court: Yes. Make it 12 o'clock noon on the 20th.

Attorney Shores: That's one week from today.

The Court: Yes. A week is a long time. Make it at 12 o'clock noon, December 20th.

Asst. Attorney General Madison: That's all that we have, Your Honor.

The Court: Has anyone anything else?

Lawyer Carter: No, sir.

[fol. 336]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

IN EQUITY

Case No. 30468

STATE OF ALABAMA, ON THE RELATION OF JOHN PATTERSON, ATTORNEY GENERAL OF THE STATE OF ALABAMA, Complainant,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, Respondent.

Transcript of Hearing—December 27, 28, and 29, 1961

Before: Hon. Walter B. Jones, Circuit Judge, Presiding, at the Court House, Montgomery, Alabama, Wednesday, December 27th, 1961, Thursday, December 28th, 1961 and Friday, December 29th, 1961.

APPEARANCES:

For the Complainant: (State of Alabama) MacDonald Gallion, Attorney General of the State of Alabama. Gordon Madison, Asst, Attorney General of the State of Alabama. James T. Hardin, Asst. Attorney General of the State of Alabama. Leslie Hall, Asst. Attorney General of the State of Alabama. William N. McQueen, Asst. Attorney General of the State of Alabama. Willard W. Livingston, Asst. Attorney General of the State of Alabama.

For the Respondent: (National Association for the Advancement of Colored People,) Robert L. Carter, Attorney at Law, New York, N. Y. Fred D. Gray, Attorney at Law, Montgomery, Alabama. Arthur Shores, Attorney at Law, Birmingham, Alabama. Peter Hall, Attorney at Law, Birmingham, Alabama. Orzelle Billingsley, Jr., Attorney at Law, Birmingham, Alabama.

[fol. 337] Assistant Attorney General Madison: If the Court please, this is the transcript of the Record in the

United States Court of Appeals in the Fifth Circuit, No. 18,576 which was introduced on the pre-trial and I would like Your Honor to use it for your convenience because the pleadings are put together there and Your Honor will not have to search through a complete file.

The Court: All right. Thank you. Go ahead.

Colloquy Between Court and Counsel on Preliminary Motions

Attorney Carter: Before we proceed, Your Honor, there are two preliminary matters I would like to raise with the Court.

The Court: Very well. Go ahead.

Lawyer Carter: One, Your Honor, on entering here today—

The Court: On what?

Attorney Carter: On entering this Court Room today I noticed that all but a very few of the Negro spectators are seated on one side of the Court. I checked with the bailiff and the bailiff indicated that he was instructed that those people were to sit there pursuant to the instructions of the Court. I would like to raise the fact that we object to this and we are requesting the Court to issue an order that anybody who comes in here may sit where they please without regard to race or color.

The Court: Your motion is denied and we will follow the customs of the State and of the country.

Attorney Shores: We take an exception, if the Court please.

Attorney Carter: Secondly, Your Honor, we have read the prior transcripts in these hearings and we have noticed in those transcripts that Negro witnesses and lawyers are not given the common usage—the common usage of courtesy which is prevalent throughout the country as to the use of Mr. and Mrs. Negro lawyers are referred to as lawyers or as Lawyer this or Lawyer that—

The Court: Do you object to the word "Attorney"?

Attorney Carter: Well, this is in the pre-trial conference but there is a difference in the other Records. Now one of the attorneys talked to the Reporter and raised this

question with the Reporter and requested the Reporter hereafter to use the common courtesy usage terms with re-
[fol. 338] spect to all of the witnesses and the Reporter indicated that he was following instructions and that he had been also instructed to do this pursuant to the customs prevalent in this community. No. one, I am asking that these be the Court's instructions and two, that the Court instruct the Reporter to desist from doing that and in terms of writing up this Record to use and to refer to all persons on equal terms and footing.

The Court: I will take the motion under consideration but it is necessary that we follow the customs of the country here and the motion is denied and you may have an exception.

Attorney Carter: We except and I want the Record to show with respect to the denial of this motion that not only do we object to this motion being denied but that we feel that the denial of this motion in respect to both of these matters affect our rights for a fair hearing in this Court, and that they go to due process and our objections are based on that ground and we except.

The Court: The motion is denied. Now, are there any other preliminary motions?

Asst. Attorney General Madison: Your Honor, we have an amendment to the Complaint and if Your Honor will look on page 23 of the transcript of Record of the United States Court of Appeals for the Fifth Circuit at paragraph 9—

The Court: What paragraph are you on?

Asst. Attorney General Madison: It is paragraph No. 9, Your Honor. We wish to amend our Complaint by putting a period after the word "race" which is in the ninth line of paragraph 9 of the original Complaint.

The Court: You want to stop after "without reference to their race"?

Asst. Attorney General Madison: That's right. A period goes at that point and by striking the rest of the sentence.

Attorney Carter: Where are we now?

Asst. Attorney General Madison: A period after the word "race" in the ninth paragraph there.

[fol. 339] The Court: I would like to say this for the benefit of all counsel. In addressing the Court, I think the dignity of the Court requires that you stand up.

Asst. Attorney General Madison: Now, Your Honor, for the purpose of facilitating the trial of this case as both the Court and the attorneys involved know, the Supreme Court of the United States has said that a reasonable opportunity must be given to the respondent in this case before January 2nd, 1962 for a hearing on its motion to dissolve the temporary injunction and on the merits. In order to facilitate the conclusion of this case, if it is humanly possible, and as soon as possible, that is to say, before we go into any more holidays and for other good reasons, I think it would be well if we were to review the Complaint and what has been admitted and what has been denied.

The Court: Yes. I would like to say this. As far as any holidays are concerned, as far as this Court is concerned, they are all over. We are getting down to work and we will transact all of the business of the Court.

Asst. Attorney General Madison: If Your Honor will turn to page 21 to facilitate the following of the original Complaint I will read allegation No. 1. "The complainant, John Patterson, is the duly qualified Attorney General of the State of Alabama, and as such brings this action in the name of and for the State of Alabama." I will next read No. 2. "The respondent, National Association for the Advancement of Colored People, is a New York corporation with its home office at 20 West Fortieth Street, New York 18, New York; copies of the Certificate of Incorporation and the Constitution of said respondent corporation are attached hereto and made a part hereof as Exhibits "A" and "B". So, Your Honor, that has been admitted by respondent's Answer. It is a New York corporation. It has a home office there and the—

Attorney Carter: Excuse me, Mr. Madison. I would think that the pleadings are before the Court and have been for a number of years. We are familiar with them and you are familiar with them and it would seem to me that if we are ready to proceed that we have a motion to dissolve which [fol. 340] is supposed to be heard, if we are ready to

proceed, in terms of what you plan to prove in communicating to the Court would expedite things both for us and for the Court but I don't see any useful purpose, Mr. Madison, by reading allegations from the Complaint—

The Court: Well, it is sort of like an opening statement to the jury and clarification for the Court and I will let him make it and you may make one too.

Asst. Attorney General Madison: Well, the purpose of that is that we do not have to introduce the articles of incorporation of New York or the Constitution and By-Laws because they are attached and they have been admitted. Third. "Respondent maintains its southeastern regional office at 1630 Fourth Avenue North, Birmingham, Alabama, with the telephone number of said office listed in the telephone directory of the City of Birmingham, Alabama. Photographs of the door and the directory in said building are hereto attached and marked Exhibits "C" and "D". According to my records, that was admitted. I will read No. 4 next. "Respondent maintains an office bearing its name upon the door thereof in the Masonic Temple Building, Birmingham, Alabama, with the telephone number for that office listed in the telephone directory of the City of Birmingham." That was admitted. No. 5 reads as follows: "Respondent has hired and still employs both agents and servants to operate its offices maintained in Birmingham, Alabama, as described in paragraphs 3 and 4 above of this Bill of Complaint." That was admitted. Now, averment No. 6. "Local chapters of said respondent corporation are organized in the State of Alabama and the County of Montgomery for the purposes set forth in Respondent's Certificate of Incorporation attached hereto and made a part hereof as Exhibit A; and agents of respondent in the State of Alabama and County of Montgomery, solicit membership, dues and contributions for said local chapters and the parent corporation." That was denied. No. 7 is as follows: "Respondent has employed or otherwise paid money to one Autherine Lucy and one Polly Meyer Hudson, members of the Negro race, to encourage and aid them to enroll as students in the University of the State of Alabama to test the policy of that institution in denying entrance as a stu- [fol. 341] dent to persons of the Negro race." That was denied.

The Court: Excuse me just a minute. Mr. Bailiff, I believe that the Court Room is just about filled to capacity. Let the doors stay closed. If somebody goes out, somebody may come in but I do not want anyone standing in the Court Room. All right. Go ahead.

Asst. Attorney General Madison: No. 8. Respondent has furnished legal counsel, namely, Arthur Shores of Birmingham, and he is an attorney admitted to practice in the State of Alabama, one Thurgood Marshall, an Executive Officer of the respondent corporation, and one Constance Baker Motley of Washington, D. C., a member of the National Association for the Advancement of Colored People, Legal Defense and Educational Fund, to represent said Arthurine Lucy in her proceedings against the officials and trustees of the University of Alabama in the Federal District Court for the Northern District of Alabama, to obtain admission as a student to that University." For the Record, she was admitted.

Attorney Carter: That was denied. I'm sorry, Mr. Madison. You are right.

The Court: Now, you are on page 23?

Asst. Attorney General Madison: On page 23 now, Your Honor. Now, Your Honor, I will read No. 9. "Respondent has by its members and agents engaged in organizing, supporting and financing an illegal boycott by Negro residents of Montgomery, Alabama, to compel the Capital Motor Lines, a common carrier, operating solely within the City and County of Montgomery, to integrate the seating arrangements in the omnibuses of said Capital Motor Lines so as to seat passengers thereon without reference to their race." And, as amended, we stop right there.

The Court: All right. You cut out the last portion. You struck out the last words.

Asst. Attorney General Madison: Now, I don't have anything about it being admitted or denied but I can see the answer to that one. If Your Honor will give me just a moment here—

Attorney Carter: It is on page 87.

Asst. Attorney General Madison: What page?

[fol. 342] Attorney Carter: Page 87.

Asst. Attorney General Madison: Thank you. Now, Your Honor, this is in reply to No. 9. "Respondent admits that it has given moral and financial support to the Negro residents of Montgomery in connection with their refusal to use the public transportation system of the City, and has furnished legal counsel to assist in the defense of Reverend M. L. King and other Negroes indicated in connection with this matter, but denies all other allegations and inferences contained in paragraph 9 of the Complaint concerning its activities. Respondent further denies that the alleged boycott was illegal and denies that the Ordinances of the City of Montgomery and the statutes of the State of Alabama requiring segregation of the races on intrastate carriers are valid." Now, I will read No. 10. "Respondents' offices, agents, employees and members, have for years past and are presently engaged in organizing chapters of respondents' corporation in Alabama, and in Montgomery County, collecting dues therefor, soliciting contributions and expending monies, loaning personal property and giving personal property to be used to advance the aims and purposes of said respondent corporation as set forth in its Certificate of Incorporation." They denied that. They admit that the respondent corporation has never qualified to do business in the State of Alabama and that they do not have an authorization. No. 12. "Respondent corporation has been a continuous business in the State of Alabama and in the County of Montgomery in violation of Article 12, Section 32, Constitution of Alabama 1901, and Section 194 of Title 10, Code of Alabama, 1940." They deny that. No. 13 reads as follows: "The acts of respondent and its continuing to do business within this State to carry out the purposes outlined in its Certificate of Incorporation without first having complied with the provisions of Section 232, Constitution of Alabama, 1901, and Section 192, 193 and 194 of Title 10, Code of Alabama, 1940, are causing irreparable injury to the property and civil rights of the residents and citizens of the State of Alabama for which criminal prosecution and civil actions at law afford no adequate relief to prevent such continuing unlawful and harmful conduct by respondent." That is denied. Now, Your [fol. 343] Honor will recall on our pre-trial hearing that we

introduced by way of amendment another paragraph, No. 14, with several sub-divisions to No. 14 and each one of those have been denied by the respondent. So that will give to Your Honor in refreshing your recollection and mine too, some of the things that have been admitted for which proof will be dispensed with, of course, and will not be necessary. In the answer which they filed they have made a motion, I believe, to strike the amendment to the answer which was filed at the pre-trial hearing and I think, possibly, Your Honor, if you will agree, that that motion to strike the amended answer which we filed then—that they may be heard on that so that we may get down to the issues.

Attorney Gray: If the Court please, as I recall it, we had a pre-trial conference a few weeks ago pursuant to Rule 38 and we have not received a copy of the Court's order as a result of that conference. I believe that under the Rule it says that the Court shall make an order which recites the action taken at the conference, the amendments allowed as to pleading and the agreements made by the parties as to any of the matters considered and which lend the issues of trial to those not disposed of by admissions or agreements of counsel. We would like to request an order from the Court pursuant to this Rule so that we will know exactly what the issues are and where we stand.

The Court: Well, I thought the Court indicated when we were having this pre-trial what its ruling would be but I will be very glad for counsel to submit the kind of order you think should be entered and I will be glad for the State to submit the kind of order they think should be entered and I will rule on it and that ought to clarify the issues. Do you have a suggested order on the pre-trial?

Asst. Attorney General Madison: Your Honor, we have a transcript of what took place there delivered to us by the Court Reporter—

The Court: This is the same thing. I have a copy before me.

Asst. Attorney General Madison: Your Honor, I don't see—in order to facilitate it, you could make this an order.

Attorney Carter: Our problem, Your Honor—we just [fol. 344] wanted to be sure where we are and that we are

all in agreement as to what the issues are before the Court and what issues are triable and what are not. This is the only reason, in terms of the written order, we just wanted to be sure that the Court and counsel on both sides have the same understanding as to where we are in these proceedings and this, I would gather, would be the reason for Rule 38. That was the only thing we had in mind, Your Honor.

The Court: Well, I thought we had a general understanding but I will be glad for counsel on each side to submit to the Court the kind of pre-trial order they think they should have based on the indications made here and then I would sign one of the orders I think most appropriate.

Asst. Attorney General Madison: What I had in mind and reference to, Your Honor, wasn't what the attorneys on the other side brought up. This is a copy of the Answer we received. "Now comes the respondent in the above styled cause and respectfully moves the Court to strike the amendment to the Complaint in this cause designated as paragraph number fourteen and each separate allegation thereof and as grounds for said motion alleges the following separately and severally. The said paragraph and each allegation thereof is irrelevant. The said paragraph is frivolous. The said paragraph is inconsistent with and a departure from the original cause of action. For further answer, without waiving the foregoing motion, the respondent denies each and every allegation of paragraph fourteen." I call the Court's attention to the fact that the prayer of the original Bill of Complaint which was filed during the administration of Governor Patterson who was then Attorney General does contain a prayer of ouster and this amendment which we filed likewise contains a prayer of ouster and the prayers are not only germane but almost identical to each other and the matters that we set forth in there we think shows acts on the part of this respondent if proven to the satisfaction of this court which would be grounds for permanently enjoining them from doing the character of business they are doing in this State, intrastate in character only which we are here dealing with. I don't know whether you can make a motion to a motion or not, but anyhow I move [fol. 345] the Court that this motion be overruled.

Attorney Carter: Before we get to that, if I may, I am concerned and I think if I can get an understanding as to just where we are at the present time—as I understood from the pre-trial conference what is presently before the Court is the motion to dissolve—is a complaint, as amended, at the pre-trial conference and today. The answer of the respondent. The respondents' motion to dissolve. As I understand the State's position, the second contempt hearing which was held in April or May of 1958 as I recall, is not before the Court. It has been abandoned except insofar as the acts which are alleged—that the respondents are alleged to have taken, are grounds for ouster, and this is what—at the present time we have filed an answer to the amendment and with motions to strike which Mr. Madison referred to previously. Now, this is my understanding of where we are at the present time and what is presently before the Court. If Mr. Madison agrees with that, then I think, possibly, that we are in a position to proceed.

The Court: Well, I think the Bill as amended and the Answers make the law in the case and the other things are merely procedural and you have a motion to dissolve the temporary injunction?

Attorney Carter: Yes, sir.

The Court: Well, you may be heard on that then. Wouldn't that be appropriate?

Asst. Attorney General Madison: Your Honor, I would like to dispose of the motion to strike my amendment because I can't tell what my issues may be until I know what—

The Court: Well, give me a copy of the amendment. It was the one that was filed on the day that we had this pre-trial hearing, wasn't it?

Asst. Attorney General Madison: Yes, sir, Your Honor.

The Court: The one that was filed December 13th.

Asst. Attorney General Madison: This is a copy of it, Your Honor.

The Court: Well, I will be glad to hear you on the motion [fol. 346] to strike if you desire to be heard.

Attorney Shores: Your Honor, did you just rule—

The Court: Did I what?

Attorney Shores: Did Your Honor just rule on our motion to dissolve be deferred until—

The Court: Well, there are amendments to the Complaint and it looks to me like you would have to pass on the motion to strike one way or the other.

Attorney Shores: Now, the grounds for the—

The Court: Now, are you and I referring to the same thing? The December 13th amendment?

Attorney Shores: That's right, Your Honor. As Your Honor indicated we filed a motion to strike the amendment on certain grounds listed in the Code that the paragraphs and each allegation thereof are irrelevant. Secondly, that paragraph number fourteen is frivolous and inconsistent with and a departure from the original cause of action. Now, the Section allowing amendments gives the complainant the right to amend and the amendment relates back to the initial pleading. Now, on reading this amendment, there are certain allegations here that are entirely new and a complete departure—

The Court: Now, if you will, call my attention to the paragraph you have just referred to.

Attorney Shores: It is sub-paragraph number fourteen in the amendment but in sub-paragraph number fourteen—

The Court: Now, the amendment here on December 13th is designated as A, B, C and D.

Attorney Shores: Well, Your Honor, paragraph D specifically—

The Court: All right. I have it before me. Go ahead.

Attorney Shores: "Has wilfully violated the restraining order issued in this case on June 5th, 1956 by continuing to carry on activities in the State by and through the Alabama State Coordinating Association for Registration and Voting and by other means known to W. C. Patton and W. P. Mitchell and Roy Wilkens as officers or employees or agents of respondent and by its attorneys." Now, we [fol. 347] submit that C has falsely charged the State of Alabama and its Attorney General with filing the contempt proceeding on April 9th, 1958 knowing the allegations therein to be false, the respondent stated that the Attorney General acting for the State of Alabama made the contempt charges even though the present defendant, the present

Attorney General and his predecessors in office well know that the respondent has carried on no organizational activities in Alabama. Also has charged the Attorney General of Alabama and the Alabama courts—that's "B"—and the State judiciary with arbitrary, vindictive and collusive proceedings brought and conducted with an alleged determination on their part—

The Court: What paragraph are you on now?

Attorney Shores: I am on "B"—

The Court: On "D"?

Attorney Shores: No, "C"—

The Court: I have them labeled as "A", "B", "C" and "D" according to the official thing filed here.

Attorney Shores: Well, this is "B" that I am reading from.

Attorney Carter: On top of page 2, Your Honor.

The Court: All right. Go ahead.

Attorney Shores: It reads this way, Your Honor. "B". "As falsely charged the Attorney General of Alabama, the Alabama Courts and the State judiciary with arbitrary, vindictive and collusive proceedings brought and conducted with an alleged determination on their part to prevent respondent from contesting respondents' ouster from the State before an impartial judicial forum; has false charged the State Circuit Court and Supreme Court of Alabama have deliberately withheld and denied to respondent access to the Courts in the State for a hearing on the merits of this case." Now, Your Honor, I will go to paragraph "E". It reads, "Did, so Complainant is informed and believes, and on such information and belief alleges, when Alabama went to meet Penn State in the Liberty Bowl three Decembers ago, seek to pressure first, the Mayor of Philadelphia, then the Governor of Pennsylvania, finally, the Penn State players into a boycott of the Alabama football team." Now, Your Honor, certainly, we submit, this comes within [fol. 348] the purview of the statute which states where amendments are irrelevant and where they are frivolous —now, we certainly submit that paragraph "E" is frivolous. Now, to charge that an organization seeks to influence a Mayor and a Governor and the people to boycott a football game—now, Your Honor, that has no relevancy to the

actual issues in this case. When stripped of its window dressing when the main issue is, first, whether or not the NAACP has registered—now, this is irrelevant to the registration of the NAACP. Secondly, whether or not it has caused irreparable injury. Well, now, nowhere would it appear—even admitting, which we do not, that the NAACP sought to influence the Governor of a State and the Mayor of a City to boycott a football game outside the State of Alabama which would cause any irreparable injury or be germane to the issues involved here. They further accuse the NAACP of falsely charging the Attorney General with seeking to prevent a hearing in this cause and our only answer to that is that the Record certainly will—we will let the record speak for itself. Five and one-half years ago when we were served with the extraordinary writ of a temporary injunction or a temporary restraining order which is a type of writ which demands the type of hearing which is the quickest type of hearing in our procedures and here five and one-half years later—it was only after the case had gone again to the Federal Court and the Circuit Court of Appeals and the United States Supreme Court when we received, finally, an order from the District Court and if Your Honor will remember, the last order from the District Court—in order to refute this allegation that the Courts and so forth have been diligent in giving us a hearing—I would just like to read from the order of the District Federal Court in requiring notice as to the proceedings being had in the State Court.

The Court: Give us the date of that order.

Attorney Shores: The date of this order is December 13th.

The Court: What year?

Attorney Shores: 1961, Your Honor. That's when it was filed. That's the order of District Judge Frank Johnson. This is the order. "Pursuant to the mandate of the United States Circuit Court of Appeals for the Fifth Circuit made [fol. 349] and entered herein on December 11, which mandate was made in accordance with the instructions and order of the Supreme Court of the United States of October 23, 1961, it is the order, judgment and decree of this Court that the order of this Court entered herein on August 11,

1960 be and the same is hereby vacated. It is the further order and judgment of this Court that the order entered herein by this Court on June 1, 1961 be and the same is hereby vacated. It is the further order and judgment of this Court that this cause be and the same hereby is reinstated on the active docket of this Court for such further action as may be considered appropriate and necessary to assure prompt disposition of all the issues involved in this case. It is the further order, judgment and decree of this Court that the plaintiff and the defendant each advise this Court in writing on or before December 19, 1961 the exact status of the State Court case that was reversed by the Supreme Court of the United States and remanded to the Court of the State of Alabama by the Supreme Court of the United States in 1959, such action being reflected in the National Association for the Advancement of Colored People versus Alabama, Ex Rel, Patterson, 360 U. S. 240. It is further ordered that the plaintiff and the defendant each advise this Court in writing on or before the 30th day of each month commencing January 30th, 1962 as to the status of the said proceedings in the State Court. It is further ordered that the costs and so forth be taxed against the State. Now, the gravamen of this case in the Federal Court was to the effect that we could not get a hearing in the State Court and the District Court sent it back for some action and we appealed it to the United States Supreme Court. The United States Supreme Court agreed that we were not getting a hearing fast enough and so they ordered a hearing by the 1st of January—

The Court: Are those the exact words of the United States Supreme Court? What did they say about January? Did they say to begin or stop or what—

Attorney Shores: Yes, sir. The Supreme Court of the United States, October term, 1961, No. 303—

The Court: What is the date of the order?

Attorney Shores: October 23, 1961, Your Honor. This [fol. 350] petition for a writ of certiorari was granted without additional filing of briefs and without argument. "The petition for writ of certiorari is granted, the judgment below is vacated and the case is remanded to the Court of Appeals, with instructions to direct the District Court to proceed

with the trial of the issues in this action unless within a reasonable time no later than January 2, 1962, the State of Alabama shall have afforded to petitioner an opportunity to be heard on his motion to dissolve the State restraining order of June 1st, 1956 and upon the merits of the action in which said order was issued. Pending the final determination of all proceedings in the State action, the District Court is authorized to retain jurisdiction over the Federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in or connected with the State action." So, Your Honor, the order of the Supreme Court and the District Court certainly would defeat the allegation that we have made false charges as to not being able to get a hearing in the State Court. The record, as we indicated, speaks for itself. Now, again, as to the other allegations with respect to football and other matters, we say they are frivolous and they are irrelevant and as such the allegation which seeks to bring in a separate cause of action which the State has agreed to eliminate, that is, the contempt proceedings of the operation of the NAACP, it seeks to inject this new action by adding one of its sub-paragraphs in paragraph number fourteen. Hence, we say that is a departure and that the amendment is frivolous and that the amendment is irrelevant and, hence, that the amendment should be stricken.

Asst. Attorney General Madison: If the Court please, I am now referring to Rule No. 28 of the Equity Rules, Part 2. "New facts occurring since the filing of the Bill of Complaint must be introduced by amendment without a supplemental bill and shall be considered to relate back to the time of the filing of the original bill unless it is inappropriate to so consider them, in which case, they must be taken as of the date the amendment is made." So, Your Honor, obviously, things occurred which we introduced by way of amendment since the original complaint was filed and cannot relate back in date to that and so we are prac- [fol. 351] tically within the Rule in filing these additional things which we say occurred since the filing of the original complaint. Now, in addition to the general prayer which is

contained in almost any Bill of Complaint filed in Equity, there is a specific prayer for the ouster of the activities being conducted within the State of Alabama that are intrastate in character on behalf of this corporation. There is a distinct difference between a corporation that has been permitted to do business in the State of Alabama and has acquired certain rights within the State in an ouster which has been permitted time after time by the Courts and the Supreme Court of the United States has affirmed such time after time, but here is a corporation that has not come into the State of Alabama and has not acquired any rights within this State insofar as any rights they may have for the type of business they conduct here. The main object of this litigation is to show the conducting of business within this State on behalf of this respondent corporation in violation of the law requiring them to qualify to do business. That's number one. That is just a part of the practice and procedure which they have been doing within this State which in some instances under the amendment violates our law, the aiding and giving of comfort to a boycott which we say is illegal. Action taken on behalf of the NAACP to what you might say knocked the University of Alabama out of sixty, seventy five or a hundred thousand dollars is not a frivolous thing to me. The other matters which we allege in that amendment, a course of conduct on their part which in one or two instances may violate our laws and which in other instances may violate our legitimate and constitutional public policy and in other instances are activities which the State of Alabama does not want any corporation, foreign or otherwise, to be conducting in this State whether it is the NAACP or anybody else. Now, reference was made to the Federal Court case. You can't go in and get Federal jurisdiction because every Judge and every Court in Alabama doesn't decide a case as quickly as a complainant wishes it to. You have got to have some other averments in that thing in order to make it go. So, to make it go this time in the Complaint they filed in Federal Court, they in effect almost aver that the Attorney [fol. 352] General and Judge Jones and members of the Supreme Court of Alabama get together and decide among themselves that we are not going to give you a hearing

on the merits of this case. Now, the allegations of that Complaint which they filed in Federal Court will be before this Court. It has already been agreed to—I beg your pardon. It wasn't agreed to but we have—yes, sir. That was agreed to—that we could use this Record to show that. Those allegations speak for themselves and they are in there. You can't laugh them out because when you get into Federal Court in these cases, as I have found out, you get into situations sometimes that don't exist in the other Court and vice versa. So, by virtue of things that the Supreme Court of the United States may have declared there are certain corporations whether the NAACP or otherwise that feel rather free to make charges against State officials, the Attorney General, the Governor, the Judge of the Court and members of the Supreme Court of Alabama. Now, those things, I say, are absolutely false and had no place in the pleadings in the Court in the United States. Now, I say that is a part of their course of conduct that they pursue in this State coupled with these other things that we will show which show a course of conduct which is sufficient to justify an enjoining of any of their acts in the State of Alabama and a decree of ouster upon a final hearing of this cause. The amendment is not only germane but is tremendously important to the issues in this case. One other phase I would like to go into here is that they brought up about the Court denying them a trial on the merits. Well, I filed this memorandum with the Supreme Court of the United States, a memorandum in opposition. On February 18th, 1960 the State propounded interrogatories. That's the State of Alabama and the NAACP. On March 15th, 1960 on motion of petitioner—the petitioner was the NAACP—the time for answering interrogatories was extended by the Court to and including April 18th, 1960. On April 18th, 1960 on motion of the petitioner, which was the NAACP, the time was again extended by the Court to and including June 13th, 1960. On June 13th, 1960 on motion of the petitioner, which is the respondent in this case, the time for answering was again extended to and including August 17th, 1960. On June 22nd, 1960 the present suit was filed (fol. 353) in Federal District Court and referred to that

suit in the Federal Court. The petitioner has never answered the interrogatories but have been granted a further time for answering since August 17th, 1960. On December 14th, 1959 after considering the number of pending cases and the business before the Court a hearing was set for February 23rd, 1960. On February 8th, 1960 for good cause shown the February hearing was continued to March 21st, 1960. On March 4th, 1960 on motion of the petitioner the March 21st, 1960 hearing was continued generally to be re-set at a later date and the proceedings filed in the Federal Court and argued in the Supreme Court of the United States that Judge Jones and the Attorney General past and present and the Supreme Court are denying them a hearing and every single one of these motions of delay are made on behalf of the petitioner who turns around and says that we, in collusion so to speak, caused it. I submit, Your Honor, that these things are material and they are germane and the motion to strike should be overruled.

The Court: Well, I am impressed with the argument here and as to paragraph "E"—I doubt that should be in. I doubt that is highly relevant but I think all the rest of them are germane and material. I grant the motion to strike paragraph "E" about the football game and paragraph "E" is out and I leave all the others in. Make a notation to that effect, Mr. Reporter for the Record.

Attorney Shores: If Your Honor please, I believe that the matter before the Court now would be the motion to dissolve.

The Court: I believe that's what the Supreme Court said, to dissolve the temporary restraining order.

Attorney Shores: We would like to submit on the complaint and answer an affidavit filed in this case and would like to argue the motion. Again, we say, that getting down to the very heart of the State's case, we come forth with two issues for the ouster of the NAACP from the State of Alabama. The first is that it failed to register and failed to designate an office and officer upon which service, so to speak, could be had and the next is that is guilty of conduct injurious to the public or against the best interest of the citizens of the State of Alabama. Now, the basis for our [fol. 354] motion to dissolve falls under these three head-

ings. First, that the bill is without Equity. That there is no showing of irreparable injury to the State and that the conduct of the NAACP and to have the NAACP ousted on the grounds alleged by the State would be to deny the NAACP constitutional rights guaranteed by the First and Fourteenth Amendments. That is, the right to assemble, to associate and freedom of speech and due process and equal protection under the law. Now, Your Honor, let us take up the first matter of the Bill being without equity. Counsel in his argument against the motion to strike stated that the NAACP has not registered and hence would not come within the purview of a corporation that had registered and was being ousted but the statute provides for situations like that and I would just like to read what the statutes say with respect to a corporation not qualified to do business in this State and we do not admit that the NAACP comes within the purview of a corporation at which this particular statute is aimed. I am reading from Title 10, Section 191. "Foreign corporations not entitled to do business in this State. Contracts of Agreements for Service Only. All contracts or agreements made or entered into in this State by foreign corporations which have not qualified to do business in this State shall be held to be void at the suit of such void corporation or anyone claiming or under such foreign corporations by virtue of said void contract or agreement." Let me see. I don't think I read that exactly. "All contracts or agreements made or entered into in this State by foreign corporations which have not qualified to do business in this State shall be held to be void at the suit of such foreign corporation or anyone claiming through or under such foreign corporation by virtue of said void contract or agreement; but nothing herein shall abrogate the equitable rule that he who seeks equity must do equity. In all suits against such foreign corporations or against persons or corporations claiming under such foreign corporation by virtue of such void contract, the foreign corporation or such person claiming under it shall be held to be estopped from setting up the fact that the contract or agreement was so made in violation of law. In all actions against foreign corporations who have not qualified to do business in this State as provided by law,

[fol. 355] the summons or other process may be served upon the officer, agent or employee of the foreign corporation who acted for or represented such foreign corporation in making the contract or agreement sued upon." Now, does this situation set up any equitable relief under which the State would be entitled to invoke the extraordinary writ of injunction? Here, the statute states that if a foreign corporation seeks to sue on a contract or other matters after having operated without having complied, then the individual may set that up and that is his defense and refuse to go through with the contract and if the corporation seeks to come into Court that it might be stopped as a result of not having complied. Further, the other penalties for failing to file—just one minute, Your Honor. I have this new Code here and I had what I wanted under the old section and Code number.

The Court: What title and section of the old Code do you want and I can get it for you.

Attorney Shores: It is the Section beginning with 191 and 192, Your Honor.

The Court: That is in what is called the first Code? Not the recompiled Code? Mr. Bailiff, see if you can find that for him. Is it Title 7?

Attorney Shores: That's right, Your Honor. I might give you the substance of it, Your Honor. There are two penalties for failing to register. One for failing to register—when a foreign corporation fails to register it subjects itself to a fine of one thousand dollars. Two: where a foreign corporation fails to designate a place of business or office or officer, it subjects itself to a fine of one thousand dollars. Now, we state that one of the elementary principles of Equity is that where there is an active remedy at law, then Equity will not intervene by way of injunction. Where a remedy for a particular wrong has been provided by statute, the general rule is that no relief in equity can be afforded in such a case by an injunction. We certainly submit that we have not been able to find any case in the report from this State where a corporation having failed to comply with this statute has been enjoined from doing any business. There have been cases where corporations

failed to register and corporations that were known to be [fol. 356] business corporations and there would be no doubt about their coming under this statute or the purview of this statute and the only penalty to which those corporations subjected themselves were the penalties provided by statute and, hence, we say, that there is an adequate remedy at law if the NAACP is subject to this particular statute. Now, we come again to the next point that there is no showing of any irreparable injury which is another cardinal principle in the granting of an injunction. The existence of a right violated where there is no adequate remedy at law must be shown. Now, they certainly have not shown that there's an inadequate remedy at law providing the NAACP is subjected to this particular statute. Now, what is the conduct for which they seek to oust the NAACP? I would just like to read from the charter of the NAACP which is attached to the State's complaint. It reads as follows: "That the principal objects for which the corporation is formed are voluntarily to promote equality of rights and eradicate cast or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the Courts, education for their children, employment according to their ability, and complete equality before the law. To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon." Now, it is for that purpose that the State seeks to oust a corporation which has the same identical—the same identity as its members. As indicated by a pronouncement of the United States Supreme Court in the first NAACP case versus The State of Alabama, 77 Supreme Court Reporter at 1163 where the Court commenting on the feasibility of the NAACP as such representing its members and the advantage the members would have in a corporate organization such as the NAACP and the Court said that the NAACP is the appropriate party to assert these rights because it and its members are in every practical sense identical. Now, for the sake of argument, we stated that the NAACP not being the type of corporation required to come within the purview of this statute that it acts as an

individual for its individual members and as such these members are seeking to attain the principles set forth in [fol. 357] this Chapter and in so doing are doing no more than helping to preserve the principles of our American Democracy and yet the State of Alabama seeks to oust an organization which is trying to bring up the level of this segment of its citizenry to enjoy the benefits guaranteed to all of its citizens on a basis of equality. Now, what are the examples that they point out that are causing this violation of the Civil Rights of the citizens of Alabama? Well, they said you encouraged Arthurine Lucy. You helped to employ counsel for Arthurine Lucy to integrate the University of Alabama. Well, the Courts decided that was a legitimate exercise of the prerogative of Arthurine Lucy and admitted her to the University of Alabama. They charged that the NAACP aided the Negro citizens of the City of Montgomery in their effort to integrate the buses of Montgomery. The Courts decided that was a legitimate exercise of the corporate functions of the NAACP and the buses were integrated. Hence, we submit, Your Honor, that a foreign corporation may not in the absence of an expressed statute be ousted except for acts constituting a misuse or abuse of powers involving its right of existence. We submit that the rights of the NAACP to exist and to conduct its operations in a lawful and legal manner that have been approved by the highest Courts of this land certainly are not grounds for the State of Alabama to oust the NAACP. Hence, we submit, Your Honor, that to oust the NAACP would deny its members the right to the freedom of association, the right to the freedom of assembly and deny them equal protection of the laws and, for that reason we submit this complaint is without equity and it has failed to show that the State has suffered irreparable injury and it does not have an adequate remedy if a remedy need be an adequate remedy at law and we submit that Alabama in its effort to interpose, you might say, its State sovereignty against the sovereign government is seeking to interpose its sovereignty against the public policy of the Federal Government and the efforts of our State of Alabama to continue to live in the ages of the past—that is doing the irreparable injury to the State of Alabama and

we submit that this Court should not issue or permit an injunction to stand that would do irreparable injury to the citizens and irreparable injury to the State of Alabama by [fol. 358] imposing such harsh terms as an injunction on the NAACP.

Asst. Attorney General Madison: Your Honor, I suggest for the Court's consideration that if in the final analysis of the trial of this case we have not introduced evidence which would justify a permanent injunction against these activities in this State and for a decree of ouster from this State that it would likewise carry out any temporary order that have heretofore been entered. Now, if we are successful in establishing to the Court's satisfaction that these things should be permanently enjoined and that they should be ousted and not permitted to do intrastate business here, then there would be no necessity for any temporary injunction either way the case goes as I see it. So, I would suggest to Your Honor that you take the motion under advisement until after the case is concluded. Now, in answer to some of these things that have been said here in the opening statements and I think we are getting a little far afield and I guess lawyers on both sides have a tendency to argue the case in support of these various motions but I wish to say that there have been many, many cases and too many of them to enumerate and read to the Court but the Court well knows that the Federal Constitution does not confer upon foreign corporations the right to engage in intrastate business in a State without securing the State's consent. They have no Constitutional right of any kind to come within the State of Alabama and engage in business here. He was reading from a book here awhile ago about the penalty for failing to qualify to do business and he said that the penalty—I believe he was reading from Section 194 and that's the one I am going to make reference to, Title 10, Section 194, that there was a penalty of one thousand dollars as a penalty for failure to qualify as I understood his argument, but that's not exactly what this thing says. It says, "That any such corporation that engages in or transacts any business in the State without complying with the provisions of the two preceding Sections, shall, for each offense, forfeit and pay

to the State the sum of one thousand dollars." Now, we have been asked just exactly what do we pin ourselves down to in this case and that's one of the things we have been considering under the general prayer in this case. Now, we haven't as yet come to a definite conclusion as to [fol. 359] whether we will ask this Court under the evidence that comes in for that penalty in addition to the other penalty. At this time we have not insisted on it but we do not want to be precluded if the evidence shows a series of offenses over a long period of years under that statute from the right of asking this Court under the statute to assess that penalty of a thousand dollars for each offense committed. So far, we have not asked for it but we certainly haven't given up the idea. Now, reference was made to the Lucy case. I want to state here that the State is not contending in this law suit that the NAACP or anyone who has proper standing cannot go into a State Court or a Federal Court where proper and contest the validity of any segregation law, any bus segregation law, or any right to go to any institution. We haven't got it in this law suit today and we haven't any question about the validity of any ordinance on account of race or color and what we complained about in the Lucy case was not the proceedings to get her into the University and not proceedings that happened up there insofar as it pertained to their activity as set up in the amendment. Now, what did they do? They admitted that counsel for the NAACP was there. The Record which we will introduce in this case shows that they made false accusations and charges against the officials of the University of Alabama. They went then from that place to the main office of the NAACP here in Birmingham, Alabama. They had the radio, press and television set up and they broadcast all over the United States of America and in foreign countries that the trustees and others at the University of Alabama were in collusion with a mob down there, in effect, to keep Arthurine Lucy out of there and after that harm had been done and scattered all over the country, they came back to Court, I wasn't there present but that's my understanding of the Record and that's signed by Judge Grooms and admitted, that they had no evidence

of that. Now, that is the purpose for what we want to introduce here and not whether Arthurine Lucy has got a right to go to the University of Alabama but whether they had a right to make false accusations and charges and then to go to the office of the NAACP and with a foreign press and a local press and radio and television and broadcast to the world those false charges and then come back and [fol. 360] withdraw them after the harm was done. That kind of activity we don't want in the State of Alabama, whether it is black or white.

Attorney Shores: We have nothing further, Your Honor.

The Court: I think the temporary restraining order should remain in force and effect until we have a hearing on the merits and whether the injunction ought to be made permanent or not, and I think we should go ahead at this time.

Attorney Shores: We take an exception, Your Honor.

Asst. Attorney General Madison: Your Honor, as I understand it now, under the Code section—I don't believe this is an Equity rule but in the trial of any suit in Equity I understand that Your Honor only considers evidence that you deem to be material and relevant. It is not exactly like the trial of a case in a law suit. We don't object to everything in the world that comes up. If at a final conclusion if it is not relevant and if it is not material Your Honor doesn't base any opinion on that and you will rule it out.

The Court: What do they call that? Isn't that the lazy man's statute?

Asst. Attorney General Madison: I think so, Your Honor.

Attorney Carter: Your Honor, I want to be sure I understand. I am not sure I understand what that means. Does that mean that all evidence is to be admitted without regard to relevancy or materiality and so forth and is it to be considered by the Court that the Court will only consider that which is material but—

The Court? All it means is this. When the evidence is attempted to be introduced, you have a right to object to it and whatever grounds you state then you are bound by those grounds and after the Court hears the whole case then the Court under this statute will presume that it only

considers legal, relevant and competent testimony. It does not mean that you are cut off from objections and you have every right to assign any grounds you want to.

Attorney Carter: Does it mean that the Court will not rule out evidence that—

[fol. 361] The Court: The Court will rule on anything that is called to its attention. If it is not called to the Court's attention then the presumption is that the Court didn't pay any attention to it and that it is irrelevant. I think you all understand that. Now, I would like to say this. The way we have been doing things here in Montgomery which is sort of a bad practice for the Court but when counsel makes objections as to the admission of evidence and puts the Court on notice that he thinks it is incompetent, irrelevant and immaterial, then that's all he has got to say and he can afterwards assign any grounds he wants to but if he prefers to say that he assigns the following grounds then it is perfectly all right with the Court.

Asst. Attorney General Madison: If the Court please, we haven't finished with the introduction of the documentary evidence but at the present time I would like to ask for the Rule before we go into the testimony of the witnesses. I don't know whether it is necessary to exclude them while we go into the introduction of the documentary evidence or not.

The Court: Well, we will call all the witnesses at one time and we will swear them all at one time and then the Rule can be put into effect.

Asst. Attorney General Madison: We would like to exclude Mr. Hardin from the Rule, of course, as he is one of our Assistant Attorneys General.

The Court: Yes. He is a State Officer. Go ahead.

Asst. Attorney General Madison: Now, Your Honor, interrogatories have been propounded and have been answered and we wish to introduce those interrogatories and answers into evidence. Now, would Your Honor like us to read the interrogatories and answers or—

The Court: Which will be the most convenient?

Asst. Attorney General Madison: Well, I would like these to be presented to your Honor and read aloud—

The Court: Well, can you put somebody on the witness stand and let him be the witness or something like that?

. . . . . .

[fol. 410] Asst. Attorney General Madison: Now, Your Honor, I have here the hearings which were conducted for the subcommittee on Constitutional Rights of the Committee of the Judiciary of the United States Senate, 85th Congress, First Session. There are a number of Bills they list there but up at the top it says, Civil Rights, 1957, for identification. Now, Your Honor, I don't know exactly what status this occupies from a standpoint of judicial knowledge or judicial notice or how authentic it might be on its own—

The Court: What does the Title Page say? Who published it?

Asst. Attorney General Madison: It was printed and published for use of the committee of the judiciary.

The Court: By whom?

[fol. 411] Asst. Attorney General Madison: The United States Government Printing Office. Anyhow, Your Honor, I want to refer to page 90.

Attorney Carter: Before any reference is made to that, we would like to find out what is being read and from whom—

The Court: Well, couldn't you give him that thing and show him the page or pages you want to introduce? That may save some time.

Asst. Attorney General Madison: Well, I thought I said on page 90—

The Court: Well, of course, that will have to relate to something after the filing of the Bill.

Asst. Attorney General Madison: Senator Stennius of the State of Mississippi made this statement before the committee and I want to read it into the Record subject to any objections they may have.

Attorney Carter: Well, before it is read into the Record, we want the Record to show we object to that. Senator Stennius had nothing to do and has nothing to do with anything that has happened in these proceedings and I object to that. I object to that before you read it.

The Court: I doubt that this is good. I hesitate to let that in.

Asst. Attorney General Madison: Well, Your Honor, may I dictate it for the Record then?

The Court: Oh, yes. Go ahead.

Attorney Carter: We except, if the Court please.

Asst. Attorney General Madison: "The Senator said, 'Now, I am not talking through my hat on that as I have the facts in the unfortunate celebrated Lucy case at the great University of Alabama. It turned out later as stated by her husband, as I understand it, that she was then being paid a monthly salary by the NAACP during the time the case was in litigation."

The Court: Well, that would be purely hearsay and I sustain the objection to that.

[fol. 412] Asst. Attorney General Madison: We reserve an exception, if the Court please. Now, Your Honor, I don't know what your practice is, but we have a number of witnesses and some of them might fall in an adverse category and others might fall in the other category, and we have got to confer with them and we have a pretty good sized staff here assembled to confer with, and I think we are about through with the documentary evidence and it would facilitate things, I believe, if we could adjourn at this time and come back at whatever reasonable hour Your Honor would fix so that we may have an opportunity to talk to our witnesses.

The Court: Well, how much time do you think you will need to confer with the witnesses?

Asst. Attorney General Madison: Well, if Your Honor does not wish to stop at this time, if you will give us a few minutes—

The Court: Well, I want to save time any way we can.

Asst. Attorney General Madison: Well, Your Honor, we have a witness that we can use now as he has been talked to by Asst. Attorney General Hall, and we can go ahead with his examination.

The Court: All right. Are you ready to swear all the witnesses on both sides and put them under the Rule? Let each side call his own witnesses and they will all be sworn at one time.

Asst. Attorney General Hall: Your Honor, we asked for a subpoena for all of the witnesses originally subpoenaed

in the case and I will call out the names of those we are particularly interested in.

The Court: All right. The witnesses will stand as your names are called. I have a certificate here from Dr. Thagard and seems to be from a reputable physician and says he is paralyzed and cannot come. That certificate is sworn to and is in the Record here.

Attorney Gray: I would like to inquire whether the various witnesses the respondent subpoenaed that were supposed to bring certain records, as to whether those records are here? Are the Secretary of State's records here? I believe, Your Honor, we are going to need them. I realize there are about eight to ten drawers full of them but we may need them in order to go through and see what we want. [fol. 413] The Court: Well, we can cross that bridge when we get to it. Now, I have this general idea—I know that some of the subpoenas duces tecum tell the Clerks and Registers and public officials to go through all their records and find this, that and the other, and it looks to the Court as though that is putting a burden on them and I think counsel ought to identify the papers they want. Otherwise, it would be sort of a fishing sort of thing and I doubt that a Court has the authority to tell a State official to bring those records here when you could have gotten certified copies and I think that is open to question. However, we will thrash that out when we get to it.

Asst. Attorney General Madison: I think, Your Honor, in some of these cases where the records are very voluminous we asked that they make insofar as they could within the time they had a summary of what they wanted and I didn't have that summary—

The Court: Yes. We do that sometimes in big insurance cases where you can't bring in the whole office. All right. Let's proceed.

Attorney Carter: Your Honor, we have a problem. We know the witnesses we have subpoenaed and those we want and need but the issue before us is going to be whether we need other witnesses and that is going to depend on the State's case.

The Court: Well, I will say this. Everybody will have a reasonable opportunity to get their witnesses here.

Attorney Carter: Well, I just wanted to know—

The Court: I will say this. We are going to have to finish this case this week now. If it takes all day and all night, I am prepared to be here. Do you want to call any more witnesses now?

Attorney General: Your Honor, I had a subpoena to bring all of the records, communications, and so forth, in the office of the Attorney General on any action taken under Article 12, Section 232 of the Constitution, Sections 192, 193 and 194 of Title 10, and that deals with foreign corporations and, of course, that is an impossible task. Now, I have a portion of—

The Court: Well, what I have in mind is to go ahead and [fol. 414] examine this one witness that you have available and put all the others under the Rule and take a recess until two o'clock and you can come by here and let me see just what these subpoenas are on duces tecum and I will be glad to pass on them. Now, Mr. Register, swear all the witnesses now.

(At this point, all witnesses called by Complainant and Respondent were sworn by the Register.)

The Court: Now, except for the State officials and lawyers and people like that, all other witnesses are put under what is called the Rule, and I want you to listen closely to what I am saying about this Rule. The Rule means that you stay out of the hearing of the other witnesses being examined and you do not talk about the case to anybody and don't discuss it and don't talk about this case at all and remain in the hall where you can be called or you may go into the other Court Room with the Bailiff there. Now, all the other witnesses will leave the Court Room.

Attorney Gray: Your Honor, all of the Court officials may be excused so far as we are concerned.

The Court: Yes. Now, Mr. Bailiff, there is to be no going in or coming out of the Court Room while a witness is on the witness stand. Go ahead.

STEWART CULPEPPER, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Assistant Attorney General Hall:

Q. State your name for the Record.

A. Stewart Culpepper.

Q. Mr. Culpepper, by whom are you employed at the present time?

A. The Atlanta Constitution.

[fol. 415] Q. By whom were you employed in 1957?

A. The Montgomery Advertiser.

Q. In what capacity?

A. Part-time correspondent during the winter and summer and full-time reporter.

Q. During the month of November, 1957, did you have occasion to go to Atlanta, Georgia to cover a story in regard to a meeting being held there at which one Roy Wilkins was one of the officials presiding?

A. Yes, I did.

Q. Will you tell the Court who this Roy Wilkins is that we are speaking of?

A. He is the Executive Director of the NAACP.

Q. That is the National Association for the Advancement of Colored People.

A. That's right.

Q. Specifically addressing your attention to the afternoon of Sunday, November 17th, 1957, did you have occasion to attend a press conference at which Roy Wilkins, the Executive Secretary of the NAACP made a statement in the presence of reporters from United Press and the Associated Press and other representatives from the press?

A. Yes.

Attorney Carter: I object to that, if the Court please. I object to this line of questioning. As I understand the question, it involves a happening that took place in Atlanta—

Asst. Attorney General Hall: We will tie it up later, Your Honor.

Attorney Carter: I object to an activity or any testimony about an activity of this organization, the respondent, or any of its officers outside the State of Alabama.

The Court: Well, unless it is related to something in the State—

Asst. Attorney General Hall: It is, Your Honor.

The Court: Well, I will let it in subject to all legal objections and if it is not relevant I will throw it out, but I will let it in subject to legal objection to each question and answer.

[fol. 416] Attorney Carter: Of course, Your Honor, my objection goes a little further. I think he is under an obligation to predicate—to show that he is—to show that he has some connection and what activity he is talking about before these questions are asked in the Record—

The Court: Well, of course, it will have to show some connection with the activities in Alabama.

Asst. Attorney General Hall: All right, Your Honor. Now, according to the deposition already read into evidence, W. C. Patton is on the payroll of the NAACP. He is a resident of Birmingham, Alabama, and we expect to show that W. C. Patton at that particular time was appointed as one of a seven man committee on implementation in regard to voter registration in each state in the South and W. C. Patton is on the payroll of the NAACP and they have admitted that.

Attorney Carter: Of course we admit that he is on the payroll but that is not the issue. The issue that the State has to prove is that W. C. Patton carried on activities in regard to the organization within the State of Alabama—

Asst. Attorney General Hall: We have the evidence to show that—

Attorney Carter: Well, you have to prove—

The Court: Well, you will have to tie it up. I will give you an exception to each question. Now, ordinarily, you do not need a motion to exclude but some of the lawyers are fearful of the new Rule and you may assume that you have a motion to exclude although you don't need it. Go ahead.

Direct examination (Continued).

By Asst. Attorney General Hall:

Q. Do you know W. C. Patton of Birmingham?

A. I have met him. I don't know him well.

Q. You have seen him and—

A. I have seen him, yes.

Q. You have talked with him in connection with your work, haven't you?

[fol. 417] A. Yes, I have.

Q. Was he present at this particular meeting we have been talking about on that particular date?

A. I don't recall that he was at the final meeting on that Sunday afternoon. He was there during that two-day meeting in Atlanta.

Q. It was a two-day meeting and he was there some time during that period.

A. That's right, but I don't recall whether he was there for the final—

Q. Now, at this press conference that was held, was W. C. Patton named to any official position in connection with the NAACP?

A. Well, he was named to represent Alabama on this seven man implementation committee for voter registration. This was announced at the meeting.

Q. All right. That's all.

Cross examination.

By Attorney Carter:

Q. When did you say this meeting took place?

A. The public announcement came on November 17, 1957, I think.

Q. When did the meeting take place?

A. It was the 15th through—I think it was the 16th and 17th. I got it on the 15th.

Q. Do you know who was present at this meeting?

A. The overall meeting or the public meeting at the end?

Q. The overall meeting.

A. Well, I know some of the people that were present but I certainly don't know them all.

Q. Well, will you name some of them?

A. Martin Luther King was there.

Q. At that time, was Rev. King from Atlanta or Montgomery?

A. From Montgomery. To the best of my memory, he was from Montgomery then because I think he said that he had flown in from Montgomery for this meeting.

Q. All right. Who else?

[fol. 418] A. W. C. Patton was there. W. P. Mitchell was there.

Q. All from Alabama?

A. All from Alabama.

Q. Was there anybody there from outside of the State of Alabama?

A. Quite a few but I wasn't in a position to know the people outside of the State not having worked for any newspapers outside of the State.

The Court: Just roughly, about how many people were at this meeting?

The Witness: I would say fifty to sixty. It has been three years and I am not sure about that.

By Attorney Carter (Continuing):

Q. Did you understand—did you have a sufficient grasp of the meeting there to understand the kinds of representation and kinds of organization and numbers of States that were represented at that meeting? Did you have that understanding, and if so, can you testify to that?

A. Well, as I recall it, these were all representatives of Southern States. I may be wrong about that but that is my memory of it.

Q. Is it your understanding that there were representatives of various Southern States and various organizations that had a meeting in Atlanta on the question of voter registration throughout the South? Is that what you understand about it?

A. Well, my understanding about it was that it was sponsored by the NAACP and that these were affiliates or

State representatives of NAACP members there and I think it was said to me—interested parties.

Q. All right. That's all.

Redirect examination.

By Asst. Attorney General Hall:

Q. Now, you spoke of your understanding of that as being a meeting of the NAACP. I would like to show you a photograph here with the notation on the back "Daisy Bates". Look at that photograph. Were you inside of the meeting at any time?

[fol. 419] A. Only for the public meeting which was the Sunday afternoon meeting—the press conference.

Q. Do you recall a scene of this kind?

A. Yes, I do.

Q. The signs you can see on the table there in the photograph, "Be A Voter" and "The Ballot", were they on those tables there at that time?

A. Yes. This was taken at the meeting.

Q. Were you present at that time?

A. Yes, I was.

Asst. Attorney General Hall: I offer this photograph in evidence, if the Court please.

Attorney Carter: I object to that, if the Court please. You didn't take that photograph, did you?

The Witness: I think I did.

Attorney Carter: You didn't identify it as such. This is a photograph that you took yourself?

The Witness: Yes, I did.

Attorney Carter: When did you take it?

The Witness: November 17th at approximately 1:30 in the afternoon.

Attorney Carter: All right. If you took it, I have no objections.

(One photograph, offered and received in evidence and identified as Complainant's Exhibit No. 9.)

[fol. 421] Redirect examination (Continued).

By Asst. Attorney General Hall:

Q. I show you this photograph with the figure "1" marked on the front and the name "Roy Wilkins" marked on the back. Is that a true representation of what you saw there at that time?

A. That is correct.

Q. Did you take that picture?

A. Yes, sir.

Q. Now, you were asked by counsel on the other side whether certain other people from Alabama were present. Do you recall whether Rev. Shuttlesworth was there?

A. Yes, he was there.

Attorney Carter: Who?

Asst. Attorney General Hall: Shuttlesworth.

By Asst. Attorney General Hall (Continuing):

Q. Do you recall whether T. C. Lightfoot was there?

A. Yes, he was there also.

Q. Do you recall whether W. P. Mitchell was there?

A. Yes, he was.

Q. Are they all people from Alabama?

A. Yes, so far as I know they are.

Q. This all took place in 1957.

A. In 1957.

Q. Now, in the depositions that were read here awhile ago, a person by name of Kelly Alexander was mentioned. Was he there?

Attorney Shores: Your Honor, we are going to object to this line of questioning. He is leading the witness. He can let this witness state whether John Doe was there or Mary Roe, if he knows—

Asst. Attorney General Hall: If you know.

The Witness: To the best of my memory, he was there.

Asst. Attorney General Hall: Do you know what he looked like?

[fol. 422] Attorney Carter: What difference does it make? What difference does it make what he looks like, if the Court please?

The Court: Well he might identify him as to whether or not it is the same man in the picture.

Attorney Carter: As a matter of fact, if you are concerned about Mr. Alexander, I will concede that Mr. Alexander was there and Mr. Wilkins was there.

Asst. Attorney General Hall: You admit that he was there?

Attorney Carter: Of course I will admit that he was there.

Asst. Attorney General Hall: Will you also admit that T. C. Lightfoot was there?

Attorney Carter: Oh, I don't know him. I never heard of him.

By Asst. Attorney General Hall (Continuing):

Q. I show you a photograph with the name "T. C. Lightfoot" on the back, and ask you if you can identify that photograph?

A. Yes.

Q. Did you take that picture?

A. Yes, I did.

Q. Is he from Alabama or was he at that time?

A. I think so at the time. I don't know where he is now.

Asst. Attorney General Hall: I offer that picture in evidence.

Attorney Carter: Who is this supposed to be?

Asst. Attorney General Hall: T. C. Lightfoot.

Attorney Carter: Oh, no. This is not T. C. Lightfoot. You have made a mistake. That's not T. C. Lightfoot.

Asst. Attorney General Hall: If the Court please, I offer these photographs in evidence identified as Complainant's Exhibit No. 10, Exhibit No. 11 and Complainant's Exhibit No. 12.

The Court: All right. Subject to all legal objections.

Attorney Shores: We except.

[fol. 423] Asst. Attorney General Hall: You may cross examine.

(One photograph, offered and received in evidence and identified as Complainant's Exhibit No. 10.)

[fol. 424] (One photograph, offered and received in evidence and identified as Complainant's Exhibit No. 11.)

[fol. 425] (One photograph, offered and received in evidence and identified as Complainant's Exhibit No. 12.)

[fol. 426] Recross examination.

By Attorney Carter:

Q. Mr. Culpepper, for the purpose of getting the Record clear, I show you once again Complainant's Exhibit No. 9. You identified this picture, did you not?

A. Yes, I did.

Q. Now, I show you Complainant's Exhibit No. 10 and I ask you, did you identify the person in that picture?

A. I don't think I did.

Q. Well, who is that person, if you know?

A. I am not sure. I know that I took the picture but I don't know.

Q. Now, I am showing you Complainant's Exhibit No. 11 which is another picture that you took. Is that right?

A. That's correct.

Q. Now, I show you Complainant's Exhibit No. 12 and you identified the picture—you identified the person in that picture as being T. C. Lightfoot. Is that correct?

A. So far as I know. I don't remember—I am not sure of the identification but I did take the picture at the meeting.

Q. You took the picture and isn't your previous testimony that State Exhibit No. 12, a picture that you took, is a photograph of T. C. Lightfoot? Isn't that your testimony?

A. I am not sure that it was him. I suppose that was my testimony. As far as I know it is T. C. Lightfoot.

Q. Do you want to change your testimony any then?

A. I am not going to change my testimony only to say that I am not sure.

Q. Well, all I want—

A. I am not going to deny that it is and I am not going to say for sure that it is because I don't know. It was in 1957 and—

Q. You testified and the name on the back of this photograph is T. C. Lightfoot, is that correct?

A. Well, I didn't put the name there if that's what you mean.

Q. In your examination by the State you identified him [fol. 427] and you identified him as T. C. Lightfoot. I just want to make sure.

A. As far as I know. I have no reason to believe it isn't. I don't know Mr. Lightfoot. I was told that's who it is.

Q. You were told by whom?

A. It was identified to me right here.

Q. Oh, you mean you accepted the statement by Mr. Hall that this was T. C. Lightfoot.

A. I said, insofar as I know.

Q. Who is Mr. Lightfoot?

A. I don't know who he is.

Q. Now, you were shown a picture and told that this was T. C. Lightfoot. A picture that you took—

Attorney General: Your Honor, we are going to object to this. He is arguing with the witness and the witness has given him the full answer.

Attorney Carter: This is cross examination, Your Honor—

The Court: Well, you have a wide range on cross examination. Let me see if I understand the witness here. As I understand it now, according to your best judgment, that is Lightfoot but you are not positive one way or the other. Is that the gist of it now?

The Witness: That's right. It was 1957 and I have never seen him before or since.

By Mr. Carter (Continuing):

Q. Are you able to identify anybody in any of these exhibits?

A. Yes.

Q. Well, would you mind doing it? I am showing you Complainant's Exhibit No. 11. Do you know anybody there?

A. Well, to the best of my knowledge, this is Roy Wilkins with the mark on his head there. The others there, I am not sure of.

Q. What about this picture? Do you know anybody on there? I am showing you Complainant's Exhibit No. 9.

A. Well, I think this is Daisy Bates but, again, this is the only time I have seen her and so I am not dead sure, [fol. 428] but so far as I know, that's who it is.

Attorney Carter: At the present time, if the Court please, we are going to renew our objections to the admission of any of these photographs and we add another ground to our former objections because of the fact that the photographer who took them is not able to identify—is not certain they are the people they purport to represent and we object to their introduction into evidence.

The Court: On the question that the countenances of these people are distorted or that they are not a fair representation—

Attorney Carter: Well, Your Honor, if Mr. Culpepper took them I would assume that he knows what he was doing—

The Court: Well, I will let them in subject to every legal objection and if they are not connected up, I will throw them out. All right. Any more questions?

Ted A. May, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Asst. Attorney General Hall:

Q. Will you state your name for the Record, sir?

A. I am Ted A. May and am District Manager for the Western Union in Birmingham, Alabama.

Q. Mr. May, were you District Manager for the Western Union Telegraph Company in Birmingham, Alabama, in August of 1961?

A. Yes, sir.

Q. In response to a subpoena duces tecum that we had directed to you, did you bring certain copies of telegrams that we requested?

A. I brought all that were available.

Q. Did you bring one dated August 6th, 1961 from W. C. Patton to a C. W. Lee at the Sheraton Park Hotel in Washington, D. C.?

[fol. 429] A. Yes, sir.

Q. Was that telegram sent from Birmingham, Alabama?

A. Yes, sir.

Q. To Washington, D. C.?

A. Yes, sir.

Q. Do you have that telegram here with you?

A. Yes, sir.

Q. May I see it, please?

A. Yes, sir. Here it is.

Asst. Attorney General Hall: I would like to read this into the Record—

Attorney Gray: Just a moment. We would like to see it first.

The Court: Yes. Let them see it.

By Asst. Attorney General Hall (Continuing):

Q. This purports to be a copy of a telegram received by telephone? Is that right, Mr. May?

A. That's right.

Q. It is indicated as being charged to Telephone No. 592-9366.

A. That is correct.

Q. Is that a Birmingham, Alabama telephone number?

A. That's correct.

Asst. Attorney General Hall: It reads as follows: "C. W. Lee. Care of James R. Weatherly, Sheraton Park Hotel." That's in Washington, D. C.—

Attorney Gray: Your Honor, we are going to object to his reading this evidence into the Record, unless there is some showing as to its relevancy—

The Court: Well, it has to be connected with this Alabama thing, and if it isn't, it will go out.

Asst. Attorney General Hall: There has been testimony about W. C. Patton being connected with the NAACP—

The Court: It hasn't anything to do with football and [fol. 430] things like that, does it?

Asst. Attorney General Hall: No, sir. It does not. It has to do with an entirely different situation.

The Court: Well, if it doesn't relate to this case, it will go out.

Asst. Attorney General Hall: It says, "C. W. Lee. Care of James R. Weatherly, Sheraton Park Hotel. Hope for you and other delegates a most successful meeting and trip. You are authorized to represent our association in a plea for a contribution." It is signed, "W. C. Patton."

By Asst. Attorney General Hall (Continuing):

Q. This, according to your records, was sent on August 6th, 1961 from Birmingham, Alabama.

A. This is a bona fide copy of the transmitted telegram recorded by telephone as identified by the recording operator's initials "P. W.". It is further identified by the transmitting operator's number "ANS-073."

The Court: That was received and transmitted in the usual way and regular course you do business up there?

The Witness: That's right, sir.

Asst. Attorney General Hall: I would like to offer this telegram into evidence, if the Court please.

Attorney Carter: Are you offering this?

Asst. Attorney General Hall. I offered it into evidence.

Attorney Carter: We object.

The Court: I will let it in subject to all objections.

Attorney Carter: We except.

Asst. Attorney General Hall: No further questions. You may cross examine.

(One Western Union telegram, dated August 6, 1961, telephone number 592-9366, to C. W. Lee from W. C. Patton, offered and received in evidence and identified as Complainant's Exhibit No. 13.)

[fol. 431]

COMPLAINANT'S EXHIBIT No. 13

Telefax WESTERN UNION Telefax

ANS-073

(Check)

PW BHAM AUG 6 1000AM
25 PD

(Tel. No.)

592-9366

(Send to)

WASHDC

CST C W LEE

CARE JAMES R WEATHERLY SHERATON PARK HOTEL

HOPE FOR YOU AND OTHER DELEGATES A MOST SUCCESSFUL MEETING AND TRIP. YOU ARE AUTHORIZED TO REPRESENT OUR ASSOCIATION IN A PLEA FOR A CONTRIBUTION

(Signature)

W C PATTON

AM 10 27

SHERATON PK HOTEL
CLK L-R
DATE 11-17

Cross examination.

By Attorney Carter:

Q. Mr. May, do you know the sendor, or sendee of this telegram?

A. I do not.

Q. All you know, Mr. May, is that this telegram which has been identified now as Complainant's Exhibit No. 13 was sent through your Birmingham office to Washington, D. C.

A. That's right.

Q. You don't know what was going on there at the Sheraton Park Hotel in Washington, do you?

A. No.

[fol. 432] Q. All right. That's all.

Redirect examination.

By Asst. Attorney General Hall:

Q. Mr. May, in the normal course of business with the Western Union, if this copy as taken from your records has the telephone number on it—would that be the normal course of operation for a person calling a telegram in over the telephone to charge it to that particular telephone—

A. That's right. We contract with the telephone company and we bill the message to the telephone number that they designate.

Q. All right. That's all.

Recross examination.

By Attorney Carter:

Q. In view of that answer, Mr. May, do you know whose telephone number that was?

A. No. I do not know whose telephone number that was.

Q. How did this information, this telegram, get into the hands of the Attorney General?

A. What?

Q. How did this telegram get into the hands of the Attorney General?

Asst. Attorney General Hall: If it please the Court, I just asked him if he responded to a subpoena duces tecum and I think that's already in the Record.

The Court: Well, he can testify that he brought it here and brought it on the order of the Court.

Attorney Carter: Well, I can ask some questions—

The Court: I am ruling with you. Go ahead.

The Witness: The telegram—a subpoena was presented to me asking for that telegram and several others.

By Attorney Carter (Continuing):

Q. What did the subpoena say?

[fol. 433] A. It says, to appear before the Circuit Court of Montgomery County in Equity on the 27th of December, 1961 at 10 o'clock A. M. to testify in the cause of the State of Alabama, Ex Rel, versus the National Association for the Advancement of Colored People, a corporation, Circuit Court of Montgomery, In Equity, as a witness for Complainant and to bring with him a copy of telegram from W. C. Patton to York, Alabama at 9:45 a. m. on July 18th. Copy of telegram from W. C. Patton to Washington, D. C. at ten a.m. on August 6th, 1961. Witness my hand the 11th day of December, 1961, George Jones, Register.

Q. How did the State get prior knowledge of the existence of that telegram before the subpoena was issued?

A. I do not know.

Asst. Attorney General Hall: We object—

Attorney Carter: Did you volunteer the information—

The Court: Hold for a minute. It looks to me like the main question before the Court is whether this is a genuine telegram or not and it looks like to me that's a collateral issue without any relevance—

Attorney Carter: Well, it may not be—you may be entirely right, Your Honor, but it does seem to me that it is important for persons that send telegrams over the Western Union Telegraph Company to be able to understand and realize how information that is supposed to be private gets into the hands of State officials.

The Court: Well, if that person was here in Court and he wanted to make some objection, he could do it, but asking him how—

Attorney Carter: Well, I asked Mr. May whether he volunteered the information.

The Witness: No.

Asst. Attorney General Hall: Your Honor, if I may do so, I would like to clarify that point.

The Court: Go ahead.

The Witness: Your Honor, if I may do so, I would like to clarify that point.

The Court: Well, I have no objection but unless some-
[fol. 434] body else asked the question, you had better not clarify it as it might bring on more argument. Anyhow, you were asked to bring that telegram and you brought it.

The Witness: That's right. Where the information came from, I do not know.

The Court: That's part of your records—

The Witness: As a matter of fact, the telegram is the property of the Western Union.

The Court: All right. Who do you have next?

Attorney Carter: No further questions.

(At this point, Court recessed and reconvened until 2:30 P. M.)

Asst. Attorney General Madison: Your Honor, this is the original telegram identified as Complainant's Exhibit No. 13 that Mr. May would like to take back to Birmingham with him as it is a part of his original records and this is being offered as a substitute for it and there is no objection on either side to that being substituted for the original.

The Court: Are there any objections?

Attorney Carter: No, sir.

The Court: All right. You may take the original with you.

Attorney Carter: Your Honor, we have had two witnesses so far and I gather that you are excusing Mr. May. We haven't excused any witness up to this point and it is perfectly agreeable to us to have Mr. May go, but we do not want Mr. Culpepper to be excused.

Asst. Attorney General Hall: Your Honor, as I understand it, he has already left and I don't know—

Attorney Carter: No. He is outside. I have talked to him.

The Court: All right. Ask him to remain. All right.
[fol. 435] Who do we have next?

Asst. Attorney General Madison: I would like to call C. W. Lee.

C. W. LEE, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Asst. Attorney General Hall:

Q. State your name, please.
A. My name is C. W. Lee.
Q. Where do you live?
A. I live at 686 West Jeff Davis Avenue, Montgomery.
Q. How long have you lived at that address?
A. For thirty years or more.
Q. Do you know W. C. Patton of Birmingham?
A. I do.
Q. How long have you been knowing him?
A. Oh, for several years. I can't exactly say for how long.
Q. Are you, at the present time, a member of the National Association for the Advancement of Colored People, a corporation?
A. No.
Q. Have you ever been?
A. Yes.
Q. When did you cease to be a member of that organization?
A. When the organization ceased to operate in Alabama in 1956.
Q. We have some answers to the interrogatories here I believe that say there are 29 members at large in the State. Are you one of those members?
A. No.
Q. Did you have occasion on August 6th, 1961 to be at the Sheraton Park Hotel in Washington, D. C.?
A. I did.
[fol. 436] Q. At that time, did you receive a telegram from W. C. Patton in Birmingham, Alabama?
A. I did.
Q. What kind of a meeting was it that you were attending there?
A. The National Negro Funeral Directors Association.

Q. Are you a Funeral Director?

A. I am the Vice-President of that organization.

Q. Are you also a member of an organization called the Alabama State Coordinating Association for Registration and Voting?

A. I am.

Q. In fact, you are one of the incorporators of that organization, are you not?

A. Possibly. I don't remember or recall right now.

Q. You, along with W. C. Patton, W. P. Mitchell, C. V. Glover, Mrs. Laura McCray, Mrs. Dorothy Jean Palmer, yourself and Attorney Orzelle Billingsley, Jr. Is that correct?

A. Possibly, correct.

Q. Do you recall when that organization was incorporated?

A. Yes.

Q. When was it incorporated?

A. In April—oh, when was it incorporated?

Q. Yes.

A. I don't recall the exact date of the incorporation.

Q. When was it organized prior to the time it was incorporated?

A. It was organized in April of 1952.

Q. I see, but it was not incorporated until sometime later.

A. That is correct.

Q. Would I be correct in saying that it was October 26th, 1957?

A. I assume so. I couldn't say yes or no on that.

Q. Do you hold an office in that organization at the present time?

A. I do.

Q. What is your position?

A. Treasurer.

Q. Who are the other officers?

[fol. 437] A. W. C. Patton is the president. Mrs. Laura D. McCray is the secretary. I am the treasurer. I doubt whether I can give you the names of any of the other officers.

Q. Do you know whether W. P. Mitchell holds an office in that organization?

A. I can't say that he does.

Q. When did you say you ceased to be a member of the NAACP?

A. When the organization stopped operating in Alabama.

Q. Would that be June 1st, 1956?

A. Around or about.

Q. Did you resign from the organization at that time?

A. Well, the organization ceased to function and so I had nothing else to do.

Q. Well, the headquarters of that organization is in New York, isn't it?

A. Yes, but those are National Headquarters.

Q. The National Headquarters. Well, did you belong to one of the local branches?

A. I did.

Q. Did you also have a part in the Alabama State Conference of Branches?

A. I had no part in that.

Q. Did you hold an office in a local branch?

A. I was a member of the local branch board of directors.

Q. Did you hold any other office?

A. None at all.

Q. Do you recall who the other officers were?

Attorney Carter: I am going to object to that, if the Court please.

Asst. Attorney General Hall: We are talking about the officers in the local. I am not asking for the membership list.

Attorney Carter: This is merely another way to get the membership list. The local officers have no relevancy to this particular issue here. It is perfectly legitimate for you to ask Mr. Lee whether he participated in the organization and his role in the organization but I object to your request with reference to any other officers of the local branches.

[fol. 438] Asst. Attorney General Hall: Your Honor, we have allegations in our Complaint to the effect that the

Alabama State Coordinating Committee for Registration and Voting is merely an alter ego of the NAACP and the purpose of these questions is to show that when the injunction for the temporary restraining order was issued by this Court that they ceased to exist in name as the NAACP but went over into this other organization, the same officers, the same functions and the same type of operation, and that's the purpose for asking the question.

Attorney Carter: If you can prove it; you prove it. The purpose of that question is—the question directed to Mr. Lee is asking him who were the officers of the local branch of the NAACP and he told him that he belonged to the NAACP prior to the time of this restraining order or this temporary restraining order. Now, if he wants to show that the organization is functioning as the Alabama State Coordinating Association for Registration and Voting, then let him do so. Let him prove—

The Court: I think the question is admissible and I give you an exception.

Attorney Carter: I beg your pardon, sir?

The Court: I think the question is admissible and you may have an exception.

Attorney Shores: We except, if the Court please.

By Assistant Attorney General Hall (Continuing):

Q. Now, I believe my question was that I asked you who were the officers of the local branch of the NAACP.

A. Robert Mathews was the general chairman. I don't recall now who the others were.

Q. Were you on the board of directors?

A. That's right.

Q. Was Robert Mathews from Montgomery?

A. That's correct.

Q. Do you know who the officers of the State Conference of Branches were?

A. No. I couldn't tell you about that.

[fol. 439] Q. Do you know whether W. C. Patton was an officer in the State Conference?

A. I think he was but I am not sure about it.

Q. Do you know whether W. P. Mitchell was an officer in that organization?

Attorney Carter: If the Court please, I am going to object to this line of questioning. Now, Your Honor, in the answers to the interrogatories the State has the names of the officers of the State Conference of the NAACP. You already have that information. It was read out here aloud in Court in the answers to the interrogatories.

The Court: Well, I don't think he is tied down to the interrogatories. I think the question is admissible and you may have an exception.

Attorney Shores: We except.

By Asst. Attorney General Hall (Continuing):

Q. Do you know whether or not D. D. Glover was an officer of the State Conference or not?

A. I don't know him.

Q. You know Mrs. Laura McCray, don't you?

A. Yes.

Q. Do you know whether or not she was a member of the State Conference?

A. I don't know.

Q. Do you know whether or not she was an officer in the Macon County Branch?

A. I don't know.

Q. Do you know whether or not Mrs. Dorothy Jean Palmer was an officer in the Jefferson County Branch?

A. I don't know.

Q. Do you know whether or not Orzelle Billingsley, Jr. was an officer either in the local branch or in the State Conference Branch?

A. I don't know.

Q. The only one you are sure of is yourself.

A. That's correct.

Q. You know you were a director.

[fol. 440] A. In a local branch. At one time.

Q. And you also think that Mathews was an officer.

A. I believe that is what I said.

Asst. Attorney General Hall: Now, Your Honor, I want to treat this witness as an adverse witness. It has been obvious, of course, that I was going to have to do that sooner

or later. There are some questions I want to ask him about his trip to Washington—

The Court: As to whether or not the Court will permit leading questions or not?

Asst. Attorney General Hall: Yes, sir.

The Court: I think the Court will permit one—

Attorney Carter: On what grounds could he treat this witness as an adverse witness, Your Honor? This witness has had no connections so far as the respondent is concerned at all. He is not an officer here. He has been a member of the local branch and has nothing to do with this organization. Now, how can this man be permitted to be an adverse witness? He has no representation with us. This is the State's witness and not the witness of the respondent. He has no connection with the respondent.

Asst. Attorney General Madison: Your Honor, may I say that there has already been introduced into evidence the Constitution and By-Laws of the National organization and although they attempt to separate themselves from these branches, any casual reading of the Constitution and By-Laws shows that they retained complete control over these branches. They have a right to remove officers. They have a right to do this, that and the other to these local branches and that's just a figment of pleading and speech making when they say that these local branches are separate and don't have anything to do with the National organization. It is in evidence and Your Honor can look at it and you can see for yourself.

The Court: I think it is admissible and I give you an exception.

[fol. 441] By Asst. Attorney General Hall (Continuing):

Q. Now, you said that you received a telegram dated August 6th, 1961 from W. C. Patton while you were at the Sheraton Park Hotel in Washington, D. C. Is that correct?

A. Correct.

Q. I believe you testified that you were there attending a Negro Funeral Directors Association meeting?

A. Yes.

Q. Do you know what Patton had in mind when he said, "Hope for you and other delegates a most successful meeting and trip."

Attorney Carter: Now, I know that is an improper question.

The Court: Don't answer the question until I rule. Let him finish the question.

Asst. Attorney General Hall: "You are authorized to represent our association in a plea for a contribution."

Attorney Carter: How in the world can he know what Patton had in mind?

The Court: I don't think you can ask him what he had in mind. The telegram might show that he authorized this, that or the other, but you cannot read another man's mind.

By Asst. Attorney General Hall (Continuing):

Q. All right. Let me ask you this then. In this telegram where he said, "You are authorized to represent our association in a plea for a contribution," do you know what association he was talking about?

A. I do.

Q. What association was that?

A. The Alabama State Coordinating Association for Registration and Voting.

Q. Couldn't that also be the NAACP?

A. No, it could not.

Q. All right. That's all.

[fol. 442] Cross examination.

By Attorney Carter:

Q. Mr. Lee, how long have you been participating in the Alabama Coordinating Committee?

A. Since its organization at the first meeting.

Q. In 1952?

A. Correct.

Q. As a matter of fact, therefore, as far as you are concerned, your membership in the Alabama State Coordinat-

ing Committee at the present time and since June 1st, 1956 when the NAACP was outlawed, could not possibly have been a cloak operating as the Association—

A. Not at all.

Q. As a matter of fact, you were a member of the NAACP when it was functioning in Alabama, were you not?

A. Yes.

Q. And you were at the same time a member of the Alabama State Coordinating Committee?

A. That is correct.

Q. Do you know how long Mr. Patton has been President of the Alabama State Coordinating Committee?

A. Since April, 1952.

Q. Since April, 1952?

A. Yes.

Q. All right. That's all.

Redirect examination.

By Asst. Attorney General Hall:

Q. When you were a member of the NAACP in Alabama, what did you do in connection with the functions of that organization in the State of Alabama?

A. Nothing.

Q. You mean to say that as a director you did nothing [fol. 443] except be a director and hold that title?

A. I held that title. I would be called into meetings once in awhile but not very often did I attend. I didn't have the opportunity.

Q. Did you ever attend any of the State Conference meetings?

A. There was one that I remember.

Q. Do you recall where that was?

A. In Birmingham.

Q. Did you ever attend one in Tuskegee?

A. No, sir.

Q. Did you ever attend any of the meetings of the NAACP branch over in Tuskegee?

A. No.

Q. How long were you a member of the NAACP?

A. I couldn't say. It has been—I just couldn't tell you how long I have been a member.

Q. Has it been as much as ten years?

A. Well, I wouldn't attempt to estimate.

Q. Were you a regular member, that is, a two-dollar or a five-dollar member or—

A. A two-dollar member.

Q. Do they call that the gold—

A. A two-dollar member.

Q. Don't they call that other one the gold—

A. No.

Q. The Gold Certificate or something like that?

A. No.

Q. Did you ever get to be a life member and pay five hundred dollars to be one?

A. No.

Q. While you were on the board of directors, do you recall who else was on the board of directors?

Attorney Gray: We object to that, Your Honor. That has no relevancy—

The Court: Isn't this confined to 1956 when the litiga-
[fol. 444] tion arose?

Asst. Attorney General Hall: Well, Your Honor, he said that he didn't know how long he was a member or how long he was a director and I want to find out if he has any recollection as to who the other directors were while he was a director.

Attorney Gray: Your Honor, this is another attempt on the part of the Complainant to ascertain the names of the members of the NAACP.

The Court: I understand that, but corporations can only act through the directors and officers. I believe that's the rule.

Attorney Gray: But, Your Honor, he is not a director of a corporation. He is a director of a local branch which is really not a member of the corporation.

The Court: Well, you can ask him about the directors of the local branch then.

By Asst. Attorney General Hall (Continuing):

Q. Well, can you name the other directors of the local branch?

A. Well, it has been so long since I have functioned as a member that I wouldn't attempt to recall the names of those who were on the Board of Directors.

Q. Well, it has only been five years since—

A. Yes, but it has been more than five years since I have been to a Board of Directors meeting.

Attorney Gray: We object, Your Honor. He is arguing with the witness.

The Court: I don't believe he is arguing. I believe he is trying to get an answer—

Asst. Attorney General Hall: I am testing his recollection.

The Court: You may have an exception.

Asst. Attorney General Hall: Can you name one person who was on the Board of Directors at the same time you were?

Attorney Carter: Now, on this question, Your Honor—

The Court: Now, let me say this. We have relaxed the [fol. 445] rule a little bit but the rule as laid down by the Supreme Court is that only one lawyer at the time when a witness is on the Stand can make objections and I think you ought to agree as to who is going to make the objections, rather than having two or three lawyers doing it at the same time. Now, if another witness comes on the stand and you want to change around, why then, that's perfectly all right.

Attorney Carter: Your Honor, we want to make this absolutely clear. We think that the State has no right to ask this man even if he is a member of the organization and they have no right to ask who are the members or directors of the local branches. This has been clearly settled and it is the law of this case in this contempt proceeding. Secondly, the question of whether he can name members of the Board of Directors of the local branch or the governing body of that local organization has nothing whatsoever to do and could not possibly have anything to do with any of the issues in this case.

Now, the whole business of the line of questioning so far has been an attempt on the part of the State to seek information and to fish for information in respect to something which, apparently, they don't have. Now, if they have the evidence that the NAACP and its members are functioning as the Alabama State Coordinating Committee for Registration and Voting, then let them prove it, but at the same time, what they are doing in asking who the members are and so forth and so on, has nothing to do with the case. Now, Your Honor, I would like to press our objections to this. This is a clear violation of the law in this case and it is completely immaterial.

The Court: Well, they are not asking the NAACP to disclose its membership but I think they could ask the man about the Board of Directors for the corporation or the local chapter—

Attorney Carter: The Board of Directors for the corporation—they have not asked for the Board of Directors of the corporation. The Board of Directors for the corporation have nothing to do with it insofar as the local branch is concerned. We are perfectly willing for them to know who the members of our Board of Directors are if they want that information. We will be glad to give [fol. 446] it to them. It is on our letterheads and so forth. We will be happy to give that to them, but this is not the question that is being asked. Mr. Lee is not being asked about the Board of Directors in New York who run the corporation, but he is being asked about what is really an executive committee of a local branch and this is not a function of the corporation. It is an unincorporated association. It is an affiliate local and we submit that it is covered by the ruling of the Court in the NAACP versus Alabama, plus the fact that it is completely immaterial.

Asst. Attorney General Madison: Your Honor, I would like the Record to show that the State is not interested at this time in securing a list of the members or a membership list of the NAACP. It is only interested at this time in securing evidence which has a tendency to prove the doing of business in the State of Alabama and the type of business that they were doing in the State of

Alabama which is a part of the issues in this case. Now, the only way you can prove that a corporation does business is through some agent or some officer or somebody else and this evidence is asked for as bearing only on the issue of whether or not they have been doing business in the State of Alabama and the character of that business and the State does not ask for it for any purpose of revealing any membership in the organization past, present or future except insofar as an officer may act and do business in the State of Alabama or as an individual.

Attorney Carter: That is not the status of the hearing at the present time. The State is not attempting to prove—of course, it is attempting to prove, I am sorry. It is attempting to prove—the State has charged and Your Honor issued an order in 1956 citing that we were doing various acts. Since that time, the State has also amended its Complaint and alleges specifically that we have done various things in violation of your order and in violation of this injunction. Now, they don't make these charges, I presume, unless they have the evidence here. If they have the evidence for it, they can call their witnesses and prove it. Now, they can ask this witness what he has done. They can ask him that if he has any connection with it that they know anything about. However, they cannot ask him that kind of question and whether [fol. 447] or not they are interested in obtaining a list of the organization—that's not the question. They are attempting to get it and whether they are interested in it or not, it comes out the same way.

The Court: I think the question is admissible and you may have an exception.

Asst. Attorney General Madison: What was that, Your Honor?

The Court: I said, he may answer if he can.

By Asst. Attorney General Hall (Continuing):

Q. Can you name one person who was a member of the Board of Directors besides yourself?

A. I stated, sir, that I would not be able to name you one unless I had a record of him.

Q. Do you know how many members of the Board of Directors—

A. I certainly do not.

Q. Let me ask you this now. What is the extent of your education?

Attorney Carter: Let me hear you again, please? I didn't get that.

Asst. Attorney General Hall: I asked him what the extent of his education was.

Attorney Gray: We object, Your Honor.

The Court: Yes. I doubt that would be admissible.

Asst. Attorney General Hall: How old are you?

The Witness: I wonder if that has anything to do with the case?

Asst. Attorney General Hall: I am asking you the questions and you have no right to object.

The Court: Yes, you have a right to ask how old he is.

Asst. Attorney General Hall: How old are you?

The Witness: I am sixty years old.

Asst. Attorney General Hall: I have no further questions for this witness.

Attorney Carter: I have no questions.

[fol. 448] W. C. Patton, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Asst. Attorney General Madison:

Q. State your name, age and address.

A. My name is W. C. Patton. I am fifty-one and I live in Birmingham, Alabama.

Q. How long have you lived in Birmingham, Alabama?

A. Oh, maybe for the last forty to forty-five years.

Q. Now, for the purpose of the Record and for that purpose only, are you white or colored?

A. Colored.

Q. How long have you been connected with the NAACP?

A. Oh, for the last ten or twelve or fifteen years. Something like that.

Q. Do you recall when you first became connected with the organization which is the respondent in this case?

A. I do not.

Q. I am asking you not for the exact date, but about when?

A. In the early forties.

Q. In what business position or work did you do for them when you first had connection with them?

A. Just a member.

Q. Just a member?

A. Yes.

Q. Now, after becoming a member, did you later hold some office or some position in the organization in Alabama?

A. I did.

Q. What was that?

A. Well, I served as President of the Branch at one time and then President of the State Conference at one time and then as Field Secretary at one time.

Q. All right. Now, when you are speaking of the Branch, [fol. 449] are you speaking of the Alabama Branch or the Birmingham Branch or—

A. The Birmingham Branch.

Q. The Birmingham Branch?

A. Yes.

Q. Now, does the organization have different branches in the State of Alabama?

A. It did have.

Q. You mean prior to 1956?

A. That's right.

Q. Do you recall how many branches it had in the State of Alabama?

A. Offhand, I do not.

Q. Could you give us some expression of your best judgment on that question?

A. Maybe about thirty-five or forty, or something like that.

Q. In your work prior to 1956, the date the injunction was entered in this case, at any time prior to that date, did you,

for and on behalf of the NAACP have any dealings with these branches?

A. I did.

Q. Now, what type of dealings did you have?

A. Something to help them get memberships and to raise funds and that sort of thing.

Q. How would you help them to get memberships? Give me in detail just what you did.

A. Go in and talk with them and urge them to set up a membership committee and show them how to plan a membership effort.

Q. Did you help to organize any of the branches?

A. I think I was partly responsible for one or two of them being started.

Q. Now, in organizing those branches, did you follow the form of the Constitution and By-Laws that was recommended by the National organization?

A. To the best of my ability.

Q. To the best of your ability you did?

A. I did.

Q. Where would you get those forms?

A. The instructions?

[fol. 450] Q. Yes. Instructions or forms for the local organizations or local branches?

A. From the National and some we originated.

Q. Do you know how the dues or the funds—do you know how they were raised?

A. Well, they had contributions from individuals.

Q. Would that be a solicitation of memberships?

A. It could be a solicitation of memberships; it could be just a simple contribution.

Q. Well, did those branches and the members of those branches and the officers of those branches, some one or all of them, engage in soliciting funds from Alabama—from within Alabama, from Alabama residents?

A. Most of them, I think so.

Q. Is that true insofar as you know of all the branches?

A. Well, as far as I know.

Q. Well, you know that's true of some of the branches, don't you?

A. Some of them did, yes.

Q. Now, did you have anything to do with the organization, operation and activity of the Alabama State Coordinating Association for Registration and Voting?

A. I did.

Q. Now, that was formed in 1957, was it not?

A. It was not.

Q. The corporation was formed in 1957.

A. It was incorporated in 1957.

Q. Well, that's what I mean. Now, do you know Thurgood Marshall?

A. I do.

Q. Did he have anything to do with that organization?

A. He did not.

Q. Do you know Roy Wilkins?

A. I do.

Q. Did he have anything to do, insofar as you know, with the Alabama State Coordinating Association for Registration and Voting?

A. He did not.

[fol. 451] Q. Well, do you know that his principle activity is with the NAACP, the respondent in this case?

A. I do.

Q. Isn't that true also of Thurgood Marshall when he was there?

A. He was legal counsel at one time.

Q. He is a Judge now, isn't he?

A. He is.

Q. But he didn't have anything to do with this incorporation.

A. Nothing.

Q. Were you President of this corporation?

A. I was.

Q. Now, you are sure that they didn't have anything to do with it, Roy Wilkins and Thurgood Marshall, with this corporation we have been referring to as being formed in 1957 as the Alabama State Coordinating Association for Registration and Voting?

A. They had nothing to do with it.

Q. I see. It was formed in 1957. They had nothing to do with it.

A. No.

Q. Do you know Robert Mathews?
A. I do.
Q. Was he ever a member of the NAACP?
A. I think he was.
Q. Is that your best judgment?
A. I guess so.
Q. William Mitchell?
A. I know him.
Q. Was he ever a member?
A. I think so.
Q. J. E. Pierce?
A. I know him.
Q. Was he a member?
A. I think that he was at one time.
Q. Is that your best judgment that he was at one time?
A. Yes.

[fol. 452] Q. Now, Roy Wilkins—at Jamaica, New York. Is that right?
A. That's right.
Q. Is that where he lives? Jamaica, New York?
A. To the best of my knowledge, I think so.
Q. Did he live there in 1954?
A. Well, I—
Q. Now, this Roy Wilkins is the same one that is connected with the NAACP that I am asking you about. He is the one that lives in Jamaica or did in 1954.
A. Will you state your question again?
Q. The Roy Wilkins that is now connected with the NAACP is the same Roy Wilkins who lived in Jamaica, New York and had a residence there.
A. Oh. I don't know where he lived in 1954.
Q. Do you know the telephone number up there?
A. I do not.
Q. Now, Charles Gomillion. Do you know him?
A. I do.
Q. Is he a member or a former member of the NAACP to your knowledge?
A. I think so.

Attorney Carter: Now, Your Honor, we are now going down the list of people who—

The Court: Let me see if I understand this. Are these people you are asking about directors or something like that?

Asst. Attorney General Madison: These people that I am asking about, Your Honor, are from the year 1954 on—I don't know. There are several hundred telegrams here—telephone calls here that were made to these people who are all members of the NAACP by this witness. Now, since these people have nothing to do with the other corporation I referred to and since he called these people over the telephone talking to them long distance at various and sundry times, I think there is rather a strong inference that he was talking and dealing in NAACP business in Alabama either through this new organization or the old one. They run from 1954 clean on through 1960—

Attorney Carter: We submit, Your Honor, that State [fol. 453] counsel is not on the witnes stand and cannot testify. Again, we submit, that insofar as asking about specific people, as to whether they are members of the organization, we submit that is illegal. He cannot ask these people whether they are members—

Asst. Attorney General Madison: Well, I think up until this time I asked those without objection on the part of counsel and I am not going to ask any more at this particular time.

Attorney Carter: Well, Your Honor, we move that the previous statements that were made in respect to what this document shows, which incidentally, I have not seen, that as to what it purports to show—that his testimony—illegal testimony at the present time—that it be stricken. We move that be stricken from the Record.

The Court: Well, as I understand it, that paper you are reading from has not been offered into evidence, has it?

Asst. Attorney General Madison: No, sir.

Attorney Carter: It has not been introduced into evidence but he has made statements from it which are in the Record and which we submit should be stricken from the Record.

The Court: All right. I will exclude that part.

Asst. Attorney General Madison: Now, Your Honor, what part are you excluding?

The Court: That part where you said there was a strong inference that he was talking to other members. That was merely your statement.

Asst. Attorney General Madison: Oh, you are excluding my argument.

The Court: Yes. Go ahead.

By Assistant Attorney General Madison (Continuing):

Q. Now, from the time that you became a member and what I am referring to by that is, from the time you became a member, a paying member, then you progressed in the organization to positions of responsibility, did you not?

A. I did.

[fol. 454] Q. Which of those positions was the one of most responsibility?

A. I presume that of Field Secretary. I guess that one was the most responsible.

Q. All right. Now, what did the Field Secretary do?

A. Tried to build up morale and solicit members and fund raising and that sort of thing.

Q. Do you know what the purposes of the organization are? Are you familiar with those Articles of Incorporation and the purposes for which the NAACP was originally incorporated I believe in 1918?

A. I have read them—

Q. In 1909—

A. I have read the objectives and purposes in the Constitution.

Q. Among those purposes is the betterment of the colored race or the Negroes in Alabama, isn't that right, as well as in other States?

A. That's right.

Q. And you, as President and as Executive Secretary, were attempting to carry out in the State of Alabama the purposes of that organization in those capacities in which you served.

A. From a point of membership and fund raising and that sort of thing.

Q. Well, that's germane to the purposes, isn't it?

A. That's right.

Q. Now, do you know Dr. Taggart?

A. I do.

Q. How well do you know him?

A. Well, as a friend. I know him by passing him and talking with him and contacting him.

Q. Well, did he have an office across from yours at one time?

A. Not—

Q. Was it in the same building?

A. In the same building, yes.

Q. How long has it been since you have seen him?

A. I couldn't recall the last time I saw him. It has been quite some time.

Q. You don't know anything about his present physical condition, do you?

[fol. 455] A. The last time I saw him, he was ill.

Q. Where was he when you saw him at the time you say he was ill?

A. In the lobby of the building.

Q. The Masonic Building?

A. That's right.

Q. Do you think he would be physically able to serve on a committee of any kind that would be organized in Birmingham in reference to the Parks up there?

A. I don't know whether he would be physically able for that or not.

Q. He might be able to lend his name to it but you don't think he could be physically present?

A. I would doubt it.

Q. Do you know his wife?

A. I—

Attorney Carter: Now, Your Honor, I would really like to know before we go further afield—I have been making a number of objections without too much success, but I would like to know just where this is going to lead us. Now, I am really not here to be concerned about Mr. Patton's social relationships with people. Now, if Dr. Taggart or his wife have some connection with this case, then I think those questions might be proper but to ask him whether he knows a certain person and for how long and what his

physical condition is and whether he is able to do such and such, and so forth, seems to me to be really going far afield. I would move at this time that this kind of question, unless the State is going to show us where they will lead to or there is a foundation and predicate laid for them, then I think they should be stricken from the Record—

The Court: What is the purpose of this question about Dr. Taggart? There is a statement here that he is paralyzed as of today—

Asst. Attorney General Madison: That's right, Your Honor. Now, we had subpoenaed and we think he is an important witness on behalf of the State in one phase of this case that we don't care to divulge at this time. Now, if it is possible for Dr. Taggart to come here in Court in response to that subpoena why then we would like to have [fol. 456] him brought down here but if he is sick and cannot come, then that's another question.

The Court: Well, if you want the doctor's certificate to be investigated in Birmingham, then that can be arranged.

Asst. Attorney General Madison: Well, I am just trying to find out if we should do that. He said he knew him a little bit and—

The Court: Well, prima facie, the certificate will be good.

Asst. Attorney General Madison: I might say, for Your Honor's information, that we have just had Mrs. Taggart subpoenaed. We have had her subpoenaed to appear and we will try to get her served right away to be here for tomorrow. Now, that's all we have for this witness at the present time but we may want to recall him later on.

The Court: All right. Any other questions?

Attorney Carter: No questions.

WILLIAM M. EAGERTON, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Asst. Attorney General Madison:

Q. State your name, age and address.

A. My name is William M. Eagerton, I am thirty-four years old and I live at 101 Beech Street, Birmingham, Alabama.

Q. For the purpose of the Record, and for that purpose only, are you white or colored?

A. White.

Q. What position do you occupy?

A. I am the North Alabama Public Relations Manager for the Southern Bell Telephone Company.

[fol. 457] Q. How long have you occupied that position?

A. Since June 15th, 1960, if I recall correctly.

Q. In that position and capacity, do you have custody and control or knowledge of the records pertaining to phone calls that migh' be made—long distance calls that might be made by one individual to another or to some other person or firm or—

A. I have access to those calls, yes.

Q. Have you made a list of the long distance telephone calls made by W. C. Patton?

A. I have not made a list. I have the record of those calls. I have made no list of them.

Q. Do you have that record with you?

A. Yes, sir.

Q. Were those records brought to Court by you in answer to subpoena duces tecum issued from this Court?

A. Yes, sir.

Q. Could you dictate into the Record the telephone calls made by W. C. Patton from and including June 6, 1956 to date?

Attorney Gray: We object, Your Honor. The proper predicate has not been laid. There is no evidence at all tending to show that these calls have anything at all to do with

this case before the Court. Furthermore, Your Honor, if the State has a list of those calls, we would like to see them.

The Court: Well, it would have to be determined whether they were relevant.

Attorney Gray: Yes, so we can determine whether they are relevant.

The Court: I have no objection to your looking at the list.

Asst. Attorney General Madison: Here it is. I would like the Court to look at them too. Now, Your Honor, there are parts of this list that we are not going to use and we are not going to examine the witness about.

Attorney General: Some of it, Your Honor, does not [fol. 458] relate to phone calls.

Attorney Gray: Well, what part can we see?

Asst. Attorney General Madison: You are not going to see any of it until we can determine what we are going to ask about.

The Court: Let me see the list for a minute and get a bird's eye view of it. Now, I think these parties have already been identified as being officers of a branch or something like that. I don't know about a general thing like that.

Asst. Attorney General Madison: Well, Your Honor, we think these telephone calls are important.

The Court: Well, unless you can tie it up some way—

Asst. Attorney General Madison: We think they tie themselves up, Your Honor, because in 1956 there was an injunction issued here against the NAACP doing business in the State of Alabama. Then, in 1957, there was another organization that was organized here which the State has contended was merely the NAACP doing business through a different organization and the testimony is here from Patton that Wilkins and Marshall had nothing to do with this new organization and that their business was concerned with the NAACP. Now, here is telephone call after telephone call made by Patton who was a high official of the NAACP all during 1954 and on up through 1960 and there might be several hundred of them, even after the date of this injunction. Now, these telephone calls going to these different people some of

whom were established members of the NAACP seems to me to establish a pretty strong inference that he was talking about NAACP business here in Alabama. I don't see how anybody could make that many telephone calls on these four or five sheets unless he was, and if he was talking about the other organization, we think that is material too, but we have got to get a record of these calls in evidence before we can examine him any further about what he talked about if that does become material. We think that the fact these calls were made by him from this phone and the position he occupies and for the reasons stated that we think there is an inference that can be drawn from this type of evidence.

Attorney Gray: Your Honor, I think the Record shows [fol. 459] that the Alabama State Coordinating Association for Registration and Voting was organized in 1952 and not in 1957.

The Court: It was incorporated about five years later.

Attorney Gray: That's correct, Your Honor, and that it actually did function from 1952 during this other particular time. Now, we feel that none of these calls are relevant and that none of them should be introduced. In any event, none of them should be introduced until we have had an opportunity to examine the witness on voir dire with respect to these phone calls.

The Court: Give me those dates again.

Asst. Attorney General Madison: The calls as listed here, Your Honor, start on May 15th, 1954. They go through—

The Court: The injunction was issued on June 1st, 1956.

Asst. Attorney General Madison: Yes, Your Honor, and they go through October, October of 1961. The ones I asked in particular about when the objections started were some dated June 6th, 1956 that I picked out here. I started with one on June 6th to Roy Wilkins.

The Court: Are you contending that the calls back beyond 1954 would be admissible? Are you contending that the calls back in 1954 are admissible?

Asst. Attorney General Madison: Only possibly by way of comparison, Your Honor.

The Court: Well, let me say this. The telephone calls beginning at the time this litigation started, June 1st, 1956, would probably be admissible and you may have an exception to each call but I don't think you can go beyond June 1st, 1956.

Attorney Gray: Your Honor—

Asst. Attorney General Madison: Your Honor, I don't see much difference in the character and quality of the calls and for that reason—

The Court: Well, I don't believe you can go back to 1954—

Attorney Gray: Well, Your Honor, before he goes into that, we would like to ask the witness questions on voir [fol. 460] dire. We would like to ask the questions of the witness that we feel are relevant for the purpose of determining whether or not any of these calls are admissible prior to his beginning to read them into evidence.

The Court: Well, let me see what the question is.

Asst. Attorney General Madison: Can you state for the purposes of the Record—

The Court: Now, hold a minute, Mr. Madison. What is the question you want to ask on voir dire?

Attorney Gray: I would like to ask a series of questions along the line—

The Court: Well, go ahead and ask them and I can rule on them at that time.

By Attorney Gray:

Q. Will you tell us whether or not by a telephone call—can you tell us who made the call?

A. Only what our records show. I couldn't tell whether that particular person made it or not.

Q. Would your records disclose that a call was made from a certain phone number listed in a person's name or would it tell you exactly who made the call?

A. Repeat the question. Repeat the question, please.

The Court: Yes, you have two questions in one there.

Attorney Gray: All right, Your Honor. I will re-phrase my question.

By Attorney Gray (Continuing):

Q. When a long distance call is made, will your records disclose the name of the person who made the call?

A. Our records would show if he gave his name. In other words, I couldn't say that it would show on every one.

Q. Then, if a person did not give his name, then the mere fact that a call was made from a particular number—your [fol. 461] records wouldn't disclose who made that call.

A. That's right.

Q. Now, would your records reflect the conversation that took place between the parties?

A. No.

Q. Then, you do not know and your records will not tell us what these conversations were about.

A. No.

Q. So, as far as you know and so far as your records may disclose, all of these may have been social calls.

A. It is a possibility.

Q. All your records will show in effect is that a call was made from a certain number to a certain number and if it is a person to person call, the name of the party on the other end.

A. That's right.

Q. Do you have with you the original records of these calls?

A. Yes.

Q. And you are prepared to testify to the Court exactly how these records were kept.

A. What information is on the records, right. Not how the records are kept.

The Court: Let me ask this question now. These records that we are discussing here are kept by the Southern Bell Telephone Company in the usual course of its business in dealing with the people using the telephone—

The Witness: Yes, sir.

Attorney Gray: Your Honor, we further object to any of these telephone calls because the witness has testified that all they will show that a call was made from a certain place to a certain person and there is no way under the sun to know the content of these calls, and we submit that this

is a fishing expedition being conducted by the State and it is entirely improper.

The Court: I will let it in and give you an exception.

Asst. Attorney General Madison: It may be fishing but [fol. 462] it hooked a pretty good fish.

Attorney Carter: You hope.

Asst. Attorney General Madison: Now, getting back—the question was—

Attorney Gray: Excuse me. Would you supply us with a list of these calls that you are asking about so that we will be able to follow you?

Asst. Attorney General Madison: I don't have any other list except the one I am using here. May I proceed, Your Honor?

The Court: Go ahead.

By Asst. Attorney General Madison (Continuing):

Q. Will you dictate into the Record the long distance telephone calls which your records show were made by W. C. Patton from June 6th, 1956 up until the present time?

Attorney Gray: Your Honor, we object. I think the Court ruled that you would have to rule on each one of these particular calls that he made and not for him to dictate—

The Court: Well, I will rule on all of them separately and severally just so you have your objection and exception to each one.

The Witness: That was June 6th, 1956 until when?

By Asst. Attorney General Madison (Continuing):

Q. Up until the present time.

A. The present time.

Q. Yes. Your last records.

A. Now, this would be the record—this is the record of the original ticket of a long distance call. On June 6th, 1956 from telephone Lyric, 2-9366, the record shows that W. C. Patton called New York and it looks like it is spelled L-O-N-G-A-C-R-E at 3-6890. A person to person call to Roy Williams.

Attorney Gray: If the Court please, we object to that being introduced and move to strike it on the grounds that there has been no person by the name of Roy Williams connected to these proceedings—

[fol. 463] The Court: Well, there could be some confusion between the name "Williams" and the name "Wilkins." I will let it in and give you an exception.

The Witness: Well, it looks like here Williams or Wilkins. It is W-i-l-l—the operator writes that, Judge. The operator writes it down.

The Court: Let me see it. Well, it is not the best handwriting but it looks like it is Roy Williams.

The Witness: That's right. One June 6th, 1956 at Lyric, 2-9366 in Birmingham to Montgomery, Alabama at No. 3-7989, a person to person call to Robert Mathews.

Attorney Gray: We make the same objections, if the Court please.

The Court: Same ruling.

The Witness: One June—it is a little blurred here—it looks like on June 9th, 1956 the record shows a call from Birmingham, Lyric 2-9366 to Georgiana at No. 4064 and the record shows the call to Robert L. Austin.

Attorney Gray: Now, Your Honor, we have never even heard of a Robert Austin prior to this time and we move to—

The Court: Well, if they don't connect it up, it will go out. It is kind of hard to prove the whole case at one time.

The Witness: On June 11th, the record shows again a call from Lyric 2-9366 to Bay Minette at telephone number 4914. A personal call to Nord Winston. It is spelled W-i-n-s-t-o-n.

Asst. Attorney General Madison: What date is that?

The Witness: June 11th.

Asst. Attorney General Madison: All right, sir. Go ahead.

The Witness: On June 14th, 1956, Birmingham, Lyric 2-9366 to Tuskegee to telephone number 780 and the person called is a Mrs. Bayer. It was Extension No. 408.

Attorney Gray: Is it understood, Your Honor, that we are objecting to each and every one of these—

[fol. 464] The Court: Yes. That's what I have been trying to do in order to save time. You have an objection and

an exception to each one individually and separately and you may assign any grounds you wish.

Recital of long distance telephone numbers called by W. C. Patton omitted from the record here (side folios 464-491).

* * * * * * *

[fol. 492] (At this point Court recessed and reconvened Thursday, December 28th, 1961 at ten o'clock a. m.)

The Court: Now, before we get under way here this morning I would like to call the attention of the attorneys outside the jurisdiction to Rules of the Alabama State Bar to see if it has been complied with. Any member of the Bar of another State or jurisdiction, actually engaged in any cause or matter pending in any Court of this State, may be permitted by such Court to appear in and conduct such cause or matter while retaining his residence in another State without being subject generally to the Rules regarding admission to the Bar of this State, provided that he first be introduced and recommended to such Court by a member of the Board of Commissioners of the Alabama State Bar, such introduction and recommendation to be either in person or by a written communication, otherwise such attorney may not appear as an attorney in any Court of this State, and I notice this has been construed to be entirely discretionary with the Court. Now, do you have anything on file here such as a recommendation or—

Attorney Gray: If the Court please, there are two things. One, I believe that Mr. Carter was introduced to this Court back in 1956 before this Rule went into effect. However, we have complied with the Rule and he does have a letter from Mr. Hill—

The Court: Let me have it then. This Rule was adopted on July 19th, 1939. I will be glad to see whatever the Bar Commission said.

Attorney Carter: Here is the letter, Your Honor. I didn't think it would be necessary since I had already been in this case, but I did comply with the Rule.

[fol. 493] The Court: Well, the Alabama State Bar says this, "Such introduction and recommendation to be either in person or by a written communication."

Attorney Gray: Well, actually, Your Honor, since this original action occurred in 1956 Mr. Carter did appear and we thought that it was a continuation—

The Court: No, it wouldn't be because this went into effect on July 19th, 1959.

Attorney Gray: Well, we have complied with the Rule.

The Court: Well, you have complied with it to this extent. The law says that he may be permitted by the trial Court but there is no requirement upon the trial Court to do that. Now, I notice a communication from the Bar says this: "As you will note, this Rule does not impose any obligation on the various Judges to admit pro hac vice any foreign attorney recommended by a member of the Board of Commissioners, and recognition of any given attorney will still remain within the discretion of the Court." Now, if you want to make a motion on this, I will be glad to hear it.

Attorney Gray: If it please the Court, we move the admission of Mr. Robert L. Carter to practice in this hearing. He is a member of the highest Court of the State of New York and he is a member of the United States Supreme Court and has been recommended to this Court by Mr. Thomas B. Hill, Jr., who is a member of the Bar Commission of the State of Alabama. We move for his admission for the purpose of practicing in this cause, if the Court please.

The Court: Well, I am going to grant the motion strictly for this case. Now, I would like to say this. Being an attorney from another State and hasn't passed a State Bar examination of this State and he hasn't attended any university of this State and hasn't taken any oath to support the Constitution and Laws of this State—however, on this statement, I am willing to admit him for this case, but I am going to be perfectly frank with you. I don't appreciate any suggestions as to how this Court should be run and suggestions to this Court that it hold day sessions and night sessions and I would like to point out that I think we will [fol. 494] get along a whole lot better if those things are not brought up again. I will let him in for this one case. Mr. Reporter, you will note that in the Record.

Attorney Carter: Thank you, Your Honor.

The Court: All right. Let's go ahead with the next witness.

Attorney Gray: We wish to cross examine the witness, William Eagerton, at this time.

The Court: Go ahead.

Cross examination.

By Attorney Fred D. Gray:

Q. State your full name, please, sir, for us.

A. Will you repeat the last part of your question, please?

Q. Will you please state your full name?

A. William F. Eagerton.

Q. Where do you live, Mr. Eagerton?

A. I live at 101 Beech Street, Birmingham, Alabama.

Q. How long have you lived in Birmingham?

A. Since September 1st, 1954.

Q. Where did you live before you moved to Birmingham?

A. In Montgomery, Alabama. I beg your pardon. It was Bessemer.

Q. Bessemer, Alabama?

A. That's right.

Q. How long did you live in Bessemer, Alabama?

A. From September 1st, 1953 to September 1st, 1954.

Q. Where did you live before you lived in Bessemer, Alabama?

A. In Montgomery, Alabama.

Q. How long have you lived in Montgomery?

A. Well, I would put it this way. From June 26th, 1927 to September 1st, 1953.

Q. Were you reared in Montgomery?

A. That's right.

[fol. 495] Q. You attended public schools in Montgomery?

A. That's right.

Q. Which of the Universities in Alabama did you attend?

A. The University of Alabama.

Q. What was your field at that University?

A. I beg your pardon?

Q. What was your field at the University?

A. Business Administration.

Q. Have you had any graduate work?

A. No.

Q. Can you tell us, sir, the various places of your employment since you finished school beginning in that order.

A. The Southern Bell Telephone Company.

Q. You have only worked for the Southern Bell Telephone Company?

A. Since I finished school.

Q. Did you work for any place before you finished school?

A. Just during the summer at high school as a construction worker for the Bear Lumber Company.

Q. Now, when you first became an employee of the Southern Bell Telephone Company, tell us what your duties were or what your position was?

A. I was employed first with the Southern Bell Telephone Company as a pay station collector here in Montgomery, Alabama.

Q. What would those dates be, please?

A. Well, that would be January 21st, 1948. Now, as to how long I remained on that job, I would have to get my personnel record to do that.

Q. Did you later begin to work with the same company in a different capacity?

A. Yes.

Q. What did you do? What was your second job with Southern Bell?

A. As Commercial Representative with the Telephone Company here in Montgomery.

Q. How long did you remain with them in that capacity?

A. I would be unable to say. It has been a number of years ago.

[fol. 496] Q. What was the next position you occupied with the Southern Bell Telephone Company?

A. Business Office Supervisor.

Q. Where?

A. In Montgomery.

Q. How long did you occupy that position?

A. I would be unable to testify to that without the personnel records.

Q. Well, in your best judgment, sir?

A. I would say—this is just an assumption now—I would say from 1951 to 1953.

Q. What was your next position with the Southern Bell Telephone Company?

A. Office Manager at Bessemer, Alabama.

Q. How long were you Office Manager in Bessemer?

A. One year.

Q. Then, what did you do next with the Southern Bell Telephone Company?

A. Manager in Birmingham, Alabama.

Q. Were you the Manager of the whole operation in Birmingham or—

A. It is divided into areas and there were three Managers at that time.

Q. You were the Manager of what area?

A. Well, according to central offices—we have a number of central offices there in Birmingham, at that time such as Alpine, Worth, Lyric, Victor, Tremont and the small towns of Gardendale, Greensboro, Pinson, Warrior, Vincent—

Q. Well, anyway, all of those came under your supervision.

A. That's right.

Q. How long did you serve in that capacity?

A. From September 1st, 1954 to November 1st, 1958.

Q. What was your next position with the Southern Bell Telephone Company?

A. Commercial Supervisor in the North Alabama Division of the Commercial Manager's Office.

Q. Is that the position you occupy now?

A. No.

Q. How long did you occupy that position?

A. From November 1st, 1958 to June 15th, 1960.

[fol. 497] Q. What was the next position you had with Southern Bell?

A. North Alabama Division Public Relations Manager.

Q. Will you please give us the dates you served in that capacity?

A. From June 15th, 1960 to the present time.

Q. Now, will you tell us once again exactly what your position is with the Southern Bell Telephone Company?

A. North Alabama Division Public Relations Manager.

Q. Now, as Public Relations Manager of the Northern Division of the Southern Bell Telephone Company, tell the Court what your duties are.

A. What are my duties?

Q. Yes.

A. The administrative part of public relations in North Alabama.

Q. When you say the administrative part of public relations in North Alabama, will you tell us what you mean by that?

A. The activities of the company—public relation activities—in other words, to assist and to be of help to the different areas that come in our division.

Q. Can you tell us concretely what are some of the acts you do.

A. Some of the acts?

Q. Yes, sir.

A. Assist as far as employee and public information is concerned in connection with activities such as going to all numeral callings to distant places and direct distance dialing and things of that nature.

Q. Are you the custodian of the records of the Southern Bell Telephone Company?

A. No.

Q. Will you tell us who is the custodian of the records of the Southern Bell Telephone Company?

A. I would say—I don't follow you exactly now. You are getting into a large number of records. I am the custodian of certain records.

Q. Which records are you the custodian of?

A. Well, anything that deals at the present time with public relations.

Q. Will you give us an example of some of the records that you are custodian of?

[fol. 498] A. Well, it gets into different surveys that we made and it gets into the public relations results that we have and things of that nature.

Q. Who would be the custodian of the records of the various telephone calls coming into the Southern Bell Telephone Company in Birmingham?

A. I would say it could be a number of people that would actually be the custodian of those records. It could be the District Manager, the Division Commercial Manager, the General Commercial Manager, and the Vice-President and General Manager. Any one of those you could say are custodians.

Q. All right, sir. Let's say for example local calls. Who would be the custodian of records of any local calls made in the Birmingham area.

A. Well, the Southern Bell Telephone Company.

Q. What particular employee of the Southern Bell Telephone Company would have and would be directly responsible for keeping those records?

A. Well, there is a joint responsibility. We have an employee and a Service Representative and we have unit supervisors and we have a Manager and this would all be in the same phase.

Q. Are you any one of those that you have just indicated?

A. No. Not at the present time.

Q. Will you tell us the person who is—I think you mentioned the unit supervisor.

A. Yes.

Q. What's his name?

A. It's a she. We have a number of them. I couldn't say right off. I would imagine there are fifteen there in Birmingham.

Q. All right. Will you tell us, sir, who is the custodian of the records dealing with long distance telephone calls made from Birmingham?

A. It would be the same as I have previously stated.

Q. Who would that be now?

A. Well, it could be a Service Representative, it could be a Unit Supervisor, it could be the Manager. In other words, they all have access to the records. The District Manager, the General Commercial Manager, the Vice President and General Manager.

Q. Who has ultimate control over those records?

[fol. 499] A. The Southern Bell Telephone Company.

Q. What particular person in the Birmingham office would be responsible for those records?

A. Well, it would vary according to—we have three offices in Birmingham. We have our east office, our downtown office and our west office. So, it would vary according to where the telephone number fell in.

Q. All right. Now let's take telephone number Lyric 2-9366. Which of your offices would that come under?

A. That would fall in the east office.

Q. In the east office?

A. Yes.

Q. Who is the custodian of records of long distance telephone calls of the east office in Birmingham?

A. Well, it goes back to—interpret for me your definition of the word custodian. Do you mean the one who has access to them or the one who—

Q. The one who—let me re-phrase my question. Will you tell us who controls the records of the east Birmingham office of the Southern Bell Telephone Company?

A. For that particular number it would be the Service Representative—

Q. Now, just a moment. Who is the Service Representative?

A. I would be unable to testify as to that. I do not know his name. I could obtain that later but I am unable to say.

Q. Are you the Service Representative?

A. No.

Q. Who else could be the controller of those records?

A. Well, the Unit Supervisor, the Manager and the District Manager.

Q. The Unit Supervisor?

A. Yes.

Q. Who is the Unit Supervisor?

A. I would be unable to state that.

Q. Are you the Unit Supervisor of the east Birmingham office?

A. No.

Q. All right. Who else did you say would finally have control of those records?

[fol. 500] A. The manager.

Q. Who is the manager of the east Birmingham branch of the Southern Bell Telephone Company?

A. We have two managers there. Marvin Hester and Maureen Wood.

Q. Do you know whether or not either of those two persons have received subpoenas to this hearing to bring any records?

A. No.

Q. Would you tell us, sir, who else could possibly have control of the records?

A. Well, going back to your question, they could have made this testimony just as well as I. In other words, the telephone company received the subpoena.

Q. Just a moment. If you will just be responsive to my question, I will appreciate it. Now, I think you mentioned that the District Manager would have control of those records.

A. He would be one of the ones that would have control.

Q. Who is the District Manager?

A. W. D. Alston.

Q. You are not the District Manager.

A. I am not W. D. Alston.

The Court: I think he has made it plain that he is a Public Relations man.

Attorney Gray: Your Honor, I would like to pursue this line of questioning and—

The Court: Well, he said he was a Public Relations man and then you asked him if he was District Manager. He told you that two or three times.

Cross examination (Continued).

By Attorney Fred D. Gray:

Q. Is there any relationship existing between your duties as Public Relations man of the Southern Bell Telephone Company and the duties of the person who has con- [fol. 501] trol of the records of the Southern Bell Telephone Company?

A. If designated by my superior I would have the duties.

Q. Who is your superior?

A. The Division Commercial Manager for the North Alabama Division.

Q. Who is he?

A. Mr. C. P. Malone.

Q. Did Mr. C. P. Malone direct you to bring these records down here?

A. Yes.

Q. All right. When did he do that?

A. On December—I beg your pardon. It was on the date the subpoena was served, December 18th.

Q. Do you have a copy of that subpoena with you?

A. I have a copy of it, yes.

Q. May I see it?

A. Yes.

Q. When was that subpoena served on you?

A. On December 18th.

Q. Who served it on you?

A. I cannot state his name.

Q. Was it an official from the Sheriff's Department in Jefferson County?

A. As far as I know, it would be.

Q. Will you tell us did the person identify himself when he presented the subpoena to you?

A. I was not in the office. He left it with a stenographer in my office on that date.

Q. Will you examine that subpoena, Mr. Eagerton, and tell us whether or not the subpoena is directed to you or whether it is directed to the Southern Bell Telephone Company?

A. It says, "Subpoena duces tecum for William M. Eagerton, Southern Bell Telephone and Telegraph Company, 1710 First Avenue North, Birmingham, Alabama."

Q. What does it direct you to bring with you?

The Court: Well, wouldn't the subpoena speak for itself? [fol. 502] Attorney Gray: It would, ordinarily, Your Honor, but we want this in the Record and the subpoena will not—

The Court: Well, it is already a part of the Record of the Court.

Attorney Gray: But, Your Honor, I mean in preparing the transcript in the event an appeal was taken—

The Court: Well, if it is part of the Record. I will say this. I am perfectly willing to have this cross examination continue but I am just not clear what you are trying to get at. Let me ask this question. Are these records that are here before the Court that you have brought here and that you have testified about, are they regular records that the company kept in the usual course of its business?

The Witness: Yes, sir.

Attorney Gray: I cannot see, Your Honor, how this man who is in the Public Relations Department can testify to that. He has no official knowledge.

The Court: Well, he said that he knows.

Attorney Gray: He sat on this witness stand, Your Honor, yesterday for three hours and read telephone numbers and I think we should be able to—

The Court: Well, I am perfectly willing for you to ask him anything about those, but what the Sheriff brought him there and what he said and things along that line—I just don't see the materiality of it and you are just taking up the time of the Court.

Attorney Gray: Your Honor, I would like to introduce into evidence the subpoena duces tecum—

The Court: Well, it is already in and I don't see any point in introducing it.

Attorney Gray: We would like to introduce it though, Your Honor, and—

The Court: All right. Consider it in the Record.

Attorney Gray: If the Court please, we offer this subpoena duces tecum into evidence to be marked and identified as Respondent's Exhibit No. 1.

[fol. 503] (Subpoena, Duces Tecum for William Eagerton, Southern Bell Telephone and Telegraph Company, 1710 First Avenue North, Birmingham, Alabama, in the case of State of Alabama, Ex Rel, versus National Association for the Advancement of Colored People, a corporation, Case No. 30468, dated December 11, 1961, offered and received in evidence and identified as Respondent's Exhibit No. 1.)

RESPONDENT'S EXHIBIT No. 1

No. 126 No. 30468

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY
In Equity.

STATE OF ALABAMA, EX REL.

vs.

NATIONAL ASSOCIATION FOR ADVANCEMENT OF COLORED PEOPLE, A CORP.

DUCES TECUM
SUBPOENA FOR

William Eagerton
Southern Bell Telephone and
Telegraph Company
1710 First Avenue North
Birmingham, Alabama

Received
12-18-61
1:20 P.M.
William M. Eagerton
DIV. PUB. REL. MGR.

Italics represent handwritten matter in original.

Received in office this.....day of

.....19.....

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Sheriff.

Executed by handing witness

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a copy of the within on the.....day

of.....19.....

.....

Sheriff.

By .....D.S.

[fol. 504]

THE STATE OF ALABAMA
MONTGOMERY COUNTY

To any Sheriff of the State of Alabama—GREETING:

You are hereby commanded to summon William Eagerton

to appear before the CIRCUIT COURT of Montgomery County, in Equity, on the 27th day of December 1961, at 10 o'clock A.M., to testify in the cause of

State of Alabama, Ex Rel. Complainants, against National Association for Advancement of Colored People, A Corp. Defendants, pending in the CIRCUIT COURT of Montgomery County, in Equity, as witness for Complainant, and to bring with him: All records of the Southern Bell Telephone and Telegraph Company pertaining to telephone calls made by W. C. Patton from either a telephone listed at 1630 Fourth Avenue North, Birmingham, Alabama, or from 1121 Cahaba Street, Birmingham, Alabama, (Lyric 2-9366) between May 15, 1954 to the date of the service of this subpoena.

Witness my hand this 11 day of December 1961

/s/ Geo. H. Jones
Register.

[fol. 505] Cross examination (Continued).

By Attorney Fred D. Gray:

Q. Now, will you tell us, sir, why the subpoena was directed to you, a person in the Public Relations Department, instead of to a person in charge of keeping the records?

Asst. Attorney General Madison: We object to that, if the Court please.

The Court: I sustain the objection.

By Attorney Fred D. Gray (Continuing):

Q. Did you compile these records?

A. I beg your pardon?

Q. I said did you compile the records?

A. What do you mean by compile?

Q. The records that you brought here yesterday, did you make them up?

A. Did I pull them actually from our files?

Q. Yes.

A. No.

Q. Who gave them to you?

A. I beg your pardon?

Q. Who gave them to you?

A. As far as the records—it would be the manager—in other words, the manager in that particular area.

Q. In what particular area?

A. Well, the east office. We were referring back to this Lyric number.

Q. Who is the manager?

A. Well, we have two. I don't know which one right off it would be under this number. It would be under his supervision. It could be Marvin Hester or Maureen Wood.

Q. Who gave you the records? Who physically handed them to you?

A. Frankly, they were sent into the office through the normal intercompany mail of our company.

Q. Did you make a list of these for the Attorney General?

[fol. 506] A. No, I did not.

Q. Did you make these records available to him so they could make a record of them?

A. No, I did not.

Q. Did you or anyone in the Southern Bell Telephone Company office make a list of these calls available to the Attorney General's office prior to this hearing?

A. As far as making the list, no, I did not. I did not have any knowledge of it.

Q. Are you saying, Mr. Eagerton, that you have no knowledge—

A. Of a list being made.

Q. Do you have any knowledge whether or not the records of the Southern Bell Telephone Company were made available to the Attorney General's office before this hearing?

A. Will you repeat the question, please?

Attorney Gray: Will you read the question, Mr. Reporter?

The Reporter: Question: "Do you have any knowledge, whether or not the records of the Southern Bell Telephone Company were made available to the Attorney General's office before this hearing?"

The Witness: As far as I know, they did. Right.

By Attorney Fred D. Gray (Continuing):

Q. They were made available. Is that right?

A. Well, that holds true with the proper authority. The records would be made available to the Chief Law Enforcement Agency of the State or to the F.B.I. or somebody like that, some proper authority.

Q. These records were made available to them. Is that correct?

A. Yes.

Q. Do you know who made them available to them?

A. No, I do not.

Q. Do you know whether or not they had a Court Order to that effect?

A. No, I do not.

Q. Will you tell us whether or not these records of your company are public records?

[fol. 507] A. They are not.

Q. They are not public records. Are they private records then?

A. What do you mean by private now?

Q. Who owns the records?

A. I beg your pardon?

Q. Who owns the records that you testified to yesterday?

A. Well, as far as the toll tickets themselves, they are the property of the Southern Bell Telephone Company.

Q. Will you tell us whether or not the phone number Lyric 2-9366—whose telephone number is that?

A. That is William C. Patton's telephone number.

Q. Tell us whether it is a listed number or an unlisted number?

A. Without having the service record card, I would be unable to testify as to that.

Q. Isn't it a fact, Mr. Eagerton, that you know now that this number is an unlisted number?

A. Without having the record, I would be unable to testify whether it was a listed number or an unlisted number.

Q. I am asking you, sir, whether you—

Attorney General: We are going to object to counsel arguing with the witness. He has answered that he does not know without having access to the service records and he has repeated the question three times.

The Court: I think the objection is good. Sustained.

By Attorney Fred D. Gray (Continuing):

Q. Will any of your notes determine whether this is a listed number or an unlisted number?

A. The service record card would indicate that.

Q. Will you get your service record cards out?

A. I do not have it. I was not subpoenaed to produce that.

Q. Would you deny the fact that this is an unlisted number?

Attorney General: We object to that, if the Court please.

The Court: I sustain the objection.

[fol. 508] By Attorney Fred D. Gray (Continuing):

Q. Will you tell us, sir, whether or not your records are available generally to the public.

A. No.

Q. What procedure would one have to take if he wanted to determine whether or not telephone calls were made from a certain number? Long distance calls. What steps would he have to take to get that information?

The Witness: Would you read the question to me?

The Reporter: Question: "What procedure would one have to take if he wanted to determine whether or not telephone calls were made from a certain number? Long distance calls. What steps would he have to take to get that information?"

The Witness: Well, that's hard to say because if the party who the number is listed for calls and says I would like to know what calls were billed to me, then we would give him the list of the calls. We would verify and discuss the calls with him.

By Attorney Fred D. Gray (Continuing):

Q. What about a third party who would want to know about calls made from another person's number other than his own?

A. They would not be made available unless proper authority was granted.

Q. When you say, proper authority, what would you consider to be proper authority?

A. I would be unable to testify to that because I was not the one that actually authorized the records.

Q. When you said proper authority, what were you referring to?

A. I beg your pardon?

Q. You said that unless proper authority was presented that these records would not be made available. Now, I just want you to define for us just what you mean by proper authority.

A. Well, say, the F.B.I. or from a subpoena or a Court Order and things of that nature. I could not go—I would [fol. 509] not know all the policy and procedure on that.

Q. Would you tell us whether or not proper authority would have the right according to the rules and regulations of the Southern Bell Telephone Company to listen to a conversation?

Attorney General: I object to that, Your Honor, and—
Asst. Attorney General Madison: Object—
The Court: I sustain the objection.

By Attorney Fred D. Gray (Continuing):

Q. Are you familiar with the corporate structure of Southern Bell Telephone Company? Is it a corporation?
A. The Southern Bell Telephone Company?
Q. Yes.
A. Yes.
Q. Do you know whether it is an Alabama corporation or not?
A. I would be unable to answer that. I do not know all of the various aspects.
Q. Are you a Director of the Southern Bell Telephone Company?
A. A Director?
Q. Yes.
A. No.
Q. Are you an officer of the Southern Bell Telephone Company?
A. No. It is according to my—

Attorney General: We object—
The Court: Hold just a minute.
Attorney General: We object, Your Honor, to this line of questioning. It goes back to the same line of questioning he pursued earlier. The witness has clearly stated what his connection is with the company and the position that he holds.
Attorney Gray: Your Honor, we—
The Court: Enlighten me on the law on this. Of course, it is cross examination but it has got to be material. Suppose he says I am a Director or I am not a Director. Now, what has that got to do with the issues before the Court?
[fol. 510] Attorney Gray: Your Honor, we think it has a

great deal of bearing. I want to find out whether he is authorized to receive service on behalf of the Board of Directors.

The Court: Authorized to do what?

Attorney Gray: To receive service, Your Honor.

The Court: Well, no point has been raised about it and he is here—

Attorney Gray: Will you tell us whether or not you or any of your superiors in any way resisted the subpoena?

The Court: Don't answer that question.

Attorney General: We object to that, Your Honor.

The Court: That hasn't got a thing on earth to do with this case.

Attorney Gray: Your Honor, by resisting—

The Court: Well, I have made my mind up on that. That's not a material issue in this case.

Attorney Carter: We except.

By Attorney Fred D. Gray (Continuing):

Q. Now, yesterday, I think you read telephone numbers for about three hours. I would like you to go back and pull those cards for us and right now I am particularly interested in the slips for August of 1951. May I see those?

A. For 1961?

Q. Yes.

A. This was actually not subpoenaed. This subpoena read for long distance telephone calls and this was a telegram that was billed.

Q. I would like to see the telegram that was billed too—

A. It was not—

Attorney Gray: Your Honor, I would like to see the telegram that is in evidence here and it is billed to this number and I would like to see it. It is very relevant.

Attorney General: Your Honor, that is not under subpoena.

Attorney Gray: It is here, if the Court please.

[fol. 511] Attorney General: He has other papers there in his possession that are not under subpoena and the witness cannot be compelled to divulge them—

Attorney Gray: Your Honor, I am asking to see the telegram—

The Court: Has this telegram been introduced into evidence and is it charged to this phone or something like that?

Attorney Gray: That's right, Your Honor.

The Court: Well, I see no objection to his testifying to that if the telegram is here before us.

Attorney Gray: Let me see that slip, please.

The Court: We had that slip here yesterday, didn't we?

Attorney Gray: I saw that slip yesterday, Your Honor.

Attorney General: If that's the same telegram, Your Honor, we have no objection.

The Court: Well, that's what I understand—

Attorney Gray: That's exactly what it is.

The Court: All right. Go ahead.

Attorney Gray: I show you, sir, this slip and I am going to first ask the Reporter to mark it as Respondent's Exhibit No. 2 for identification.

The Reporter: It is so marked.

By Attorney Fred D. Gray (Continuing):

Q. I show you, Mr. Eagerton, Respondent's Exhibit 2 marked for identification, and ask you to tell us what that is.

A. This was the charge for a telegram to the telephone number.

Q. Will you interpret the information that is on it and read it to the Court, please?

A. It was billed to telephone number 592-9366. It was a telegram with destination of Washington, D. C. It was signed by W. C. Patton.

Q. What is the date on it?

A. The date is August 6th.

Q. What year?

[fol. 512] A. The record does not show the year but it was billed in 1961.

Q. Then, is it your testimony that was sent on August 6th, 1961?

A. To the best of my knowledge, yes.

Q. Will you tell us if that phone number is Mr. Patton's phone number?

A. Yes.

Q. Is that the same number that previously was a Lyric phone number that you testified to yesterday and today?

A. Yes.

Q. Now, I show you Complainant's Exhibit No. 13 which is a telegram. Will you please look at that and examine the date?

A. I am not familiar with the dates that appear on a telegram.

Q. This is charged to that same phone number, isn't it?

Asst. Attorney General Madison: Your Honor, he testified to that already.

The Court: Yes, I think we have been over that once.

Attorney Gray: Your Honor, that's the telegram I am asking him about now. I was examining him the other time from a card.

The Court: Well, make it plain so the witness will know—

Attorney Gray: I think I mentioned it was Complainant's Exhibit 13, Your Honor.

The Witness: The only thing I can go on is the telephone number that is shown on the telegram.

Attorney Gray: What telephone number—

The Witness: That number is 592-9366.

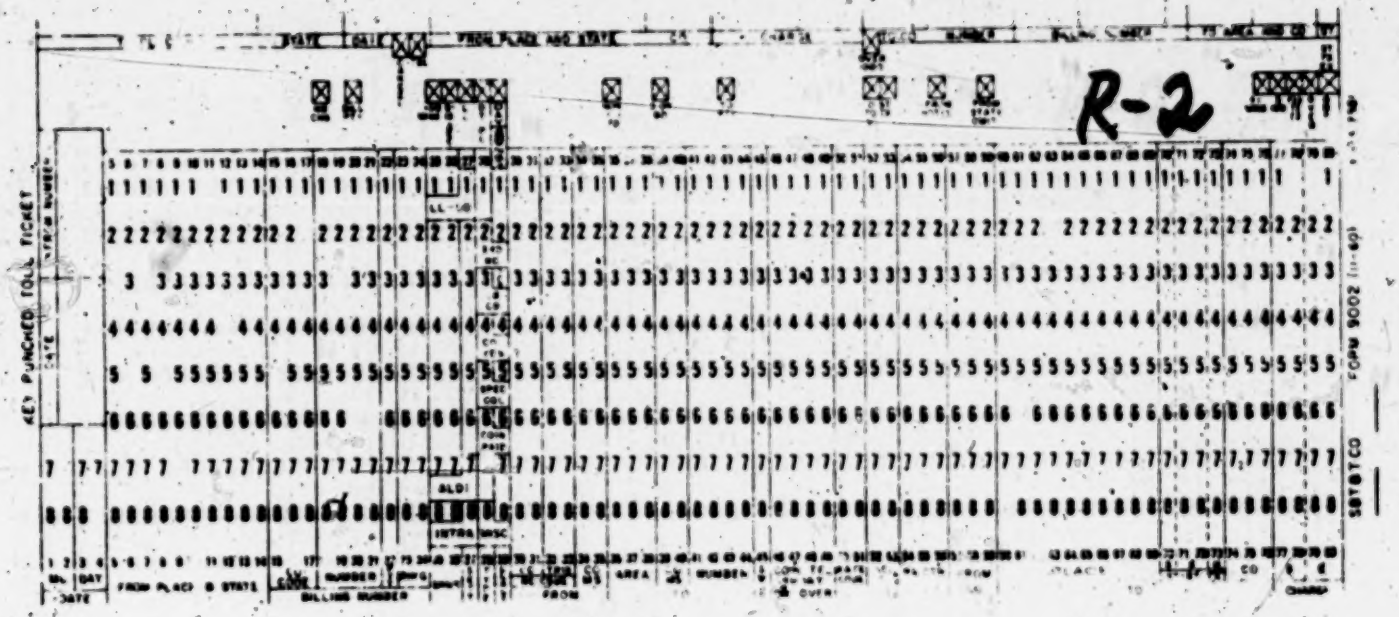
Attorney Gray: That's the same telephone number that you testified to when you referred to Respondent's Exhibit No. 2, was it not?

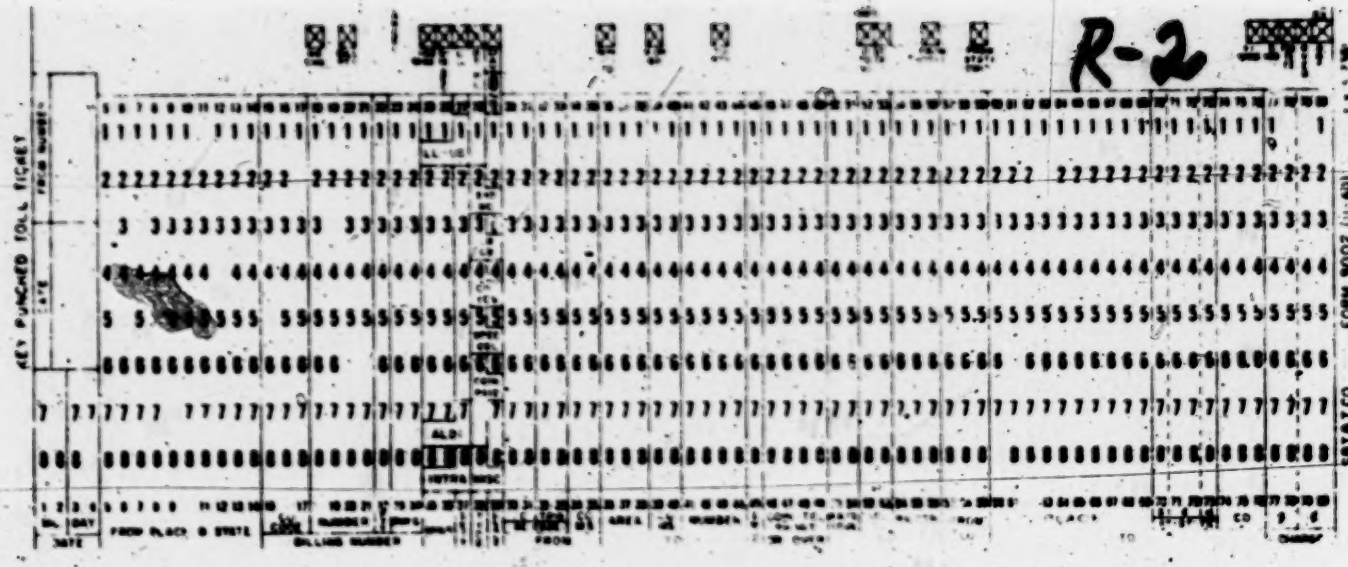
The Witness: That, yes.

Attorney Gray: If the Court please, I would like to introduce into evidence this ticket and slip with reference to the charges for a telegram that was made from this telephone which correlates to the telegram that was introduced into evidence yesterday.

[fol. 513] (Key Punched Toll Ticket and attached slip, dated August 6, telephone number 592-9366, W. C. Patton, offered and received in evidence and identified as Respondent's Exhibit No. 2.)

RESPONDENT'S EXHIBIT NO. 2




R-2
KEY PUNCHED TOLL TICKET
FROM NUMBER
DATE
FROM PLACE & STATE
COIN
DIALED NUMBER
MIN.
FROM
AREA
NUMBER
TO PLACE
TO
CO
CHARGE
FORM 9002
SOUTHCO

592-4366

R-2

[fol. 514] Cross examination (Continued).

By Attorney Fred D. Gray:

Q. Will you tell us, sir, what contract or agreement exists between the Western Union and the Southern Bell Telephone Company with reference to sending telegrams?

Asst. Attorney General Madison: We object to that, if the Court please.

The Court: I think the objection is good. I don't see the materiality of that. What sort of contract they had—

Attorney Gray: Yesterday, Your Honor, I believe Mr. Mays testified that the Western Union had a contract with the Telephone Company to make these charges and all I want to do is to just tie in the charges of the telephone company in this telegram.

The Court: Well, you were asking him to tell about a contract and I don't think that's material.

Attorney Gray: I just asked him if a contract existed.

The Court: Well, I sustain the objection and give you an exception.

By Attorney Fred D. Gray (Continuing):

Q. Can you tell us whether or not there is any type of arrangement between Western Union and Southern Bell whereby a person may call in over his telephone a telegram to the telegraph office and it would be charged to his phone?

Attorney General: We are going to object to that, Your Honor, as to what arrangements have been made between Southern Bell Company and—

The Court: I would be willing—without going into the details—just to see if they have a working arrangement but not to go into detail about it. He may say whether or not they have an arrangement.

Attorney Gray: That's all I want, Your Honor.

The Witness: To my knowledge, there is an arrangement [fol. 515] and a telegram can be charged to a telephone number.

By Attorney Fred D. Gray (Continuing):

Q. I think you testified earlier, sir, that these records—all of the records you have brought here—were made available to the Attorney General's office prior to this hearing. Now, did you also make available to them at that time this Respondent's Exhibit No. 2 which indicates that a telegram was made to Mr. Patton?

A. I did not authorize—I do not have the authority to authorize as far as these records being made available.

Q. My question was merely following up an earlier answer that you had given and I am only asking you whether that business about the telegram was made available to the Attorney General's office along with these other records?

A. I cannot testify that this particular slip was made available.

Q. But it was included in your long distance call records, was it not?

A. They are included. Telegram charges are included in the long distance calls.

Q. Mr. Eagerton, are you the son of Ralph T. Eagerton, Sr.?

A. Yes, I am.

Q. And he is employed by the State of Alabama who is the Complainant in this case?

Attorney General: Your Honor, we are going to object to that line of questioning. I don't see what possible relevancy it has to the issues in this case.

The Court: Yes.

Attorney Gray: Your Honor, I can tell you what relevancy it has. What we are showing to the Court is why this subpoena was issued to a Public Relations man instead of a real official or the custodian of the records. The State of Alabama is the Complainant in this case and I think that we should be permitted to show the Court what relationship exists between this witness and his immediate family and the Complainant in this case.

Asst. Attorney General Madison: We strongly object to—

[fol. 516] Attorney General: We object to that, Your Honor.

The Court: I sustain the objection.

Attorney Carter: We except—

Attorney Gray: We take an exception, Your Honor, and for the Record, we would like to make an offer of proof.

The Court: All right. Go ahead.

Attorney Gray: If the Court had permitted us to go into this line of questioning, we believe the testimony would have shown—

Attorney General: We object to this, Your Honor—

The Court: Well, we don't have a jury—

Attorney Gray: That the witness is the son of Mr. Ralph T. Eagerton, Sr., who either is or has been Chief Examiner of the State Department of Examiners of Public Accountants and has been for a number of years, and we believe the evidence would further show that this witness is a brother to Ralph R. Eagerton, Jr. who either now or quite recently has been employed by the State of Alabama in the Department of Revenue.

The Court: The offer is denied.

Attorney Gray: We except.

The Court: All right. Go ahead.

Attorney Gray: I would like to—I think on yesterday you began testifying— Your Honor, we would be perfectly willing for a substitute to be made of these cards at the conclusion of this hearing.

The Court: All right. That is discretionary with the Court and I will let them do it if they want to.

By Attorney Fred D. Gray (Continuing):

Q Yesterday you testified with reference to certain telephone calls beginning in 1956. Now, may I see those various slips that you testified from, please? May I see that?

A. Well, there again, I did not testify to this particular slip.

Q. Well, may I see it? They are records of the corporation and they are here and we think they are material and I would like to see them.

A. Again, I say, I was not subpoenaed to bring these and [fol. 517] if the Court orders it, then I will be glad to.

The Court: Well, he is referring to the ones that were testified about yesterday.

The Witness: Yes, sir, but I did not testify to the telegrams that were billed to this number.

The Court: Well, he is asking you about the ones you testified about.

The Witness: That's the ones I testified about, Your Honor.

Attorney Gray: Your Honor, there is a telegram slip which is in the witness' hands, I believe, and I saw it yesterday, and I would simply like to see it once again.

The Court: What kind of telegram slip was it?

Attorney Gray: It simply indicates that a telegram was sent from this number. Now, the State has gone to the expense of getting up all this information. They can get it without a subpoena and he has the records here and he won't let me see them. I think we should be able to see anything else they have brought here—

The Court: Let him have them.

Attorney Gray: Thank you, Your Honor.

By Attorney Fred D. Gray (Continuing):

Q. Now, he testified on yesterday to certain information contained on these various cards. I would like the Record to clearly show all of the evidence contained on some of these cards and particularly the space for certain information. Now, will you tell us—just take either one of these cards, please, sir. Take this telephone number and look at it and will you tell the Court all of the information that is contained on that card.

A. You mean just read it to the Court?

Q. Yes, sir.

A. Well, it has up here the date. It has JUN. That stands for the month of June. It has the figure 6 and then the figures 56. It has the word "FROM" and it has the letters "PL". It has in parenthesis the letters "TC". It has [fol. 518] the words, "BIRMINGHAM, ALABAMA."

Q. Tell us what "PL" means? What does that mean?

A. That means the place. The toll center is at Birmingham, Alabama. Then it has the figure, 1. Then it has place. Then it has the word number. Then it has "LY 2-9366." It

has in capital letters the word "PERS." It has by that the name of W. C. Patton. Then it has the words, "Special Instructions"—

Q. Now, that shows to whom or who made the call or what?

A. The record shows that W. C. Patton placed the call from Birmingham. It has the letter "T" and the letter "C" which stands for Time and Charges and that's if the customer is called back and advised as to the time and charges. Next it has the figure 2 and then the letters PL and then the letters NY, and then the State and then it has the number and in this case, the place, New York and then the letters LO—I am having to read an operator's writing here and it isn't very good. To the best of my knowledge it is spelled LONG ACRE. The figures 36890. The person is identified as Roy and down below it is spelled W-i-l-k-i-n-s. Here we have whether the call was collect and whether it was accepted and the address name. If they had to go through information to get the number then they would put the address down there and then the letters OPR, the operator who handled it, 213, and the filing time was 2:50 p.m. and the charge was $2.25 and it was for one minute and the class of call was person to person. The tax is not shown. This is the route. This would be the operator as she goes through another toll center and so forth.

Q. So, on each of these slips it indicates even the time, doesn't it?

A. Yes.

Q. And that call was a one minute call, I believe you said.

A. On the front it shows one minute. On the back it shows—actually, we have a clock and it shows 42 seconds which would be billed for one minute.

Q. Now, may I see your tickets for July of 1956?

A. Yes. Here they are.

Q. Now, were there any telegrams sent during that month?

[fol. 519] A. Based on these records there was none charged to the telephone number. I could not say there were any telegrams sent during that month.

Q. Now, each of these are calls that you testified to yesterday. Is that correct?

A. Yes.
Q. This group is for the month of July, 1956?
A. Yes.

Attorney Gray: Your Honor, we would like to have these identified and each one of them introduced into evidence as Respondent's Exhibit No. 3. Now, that's true of all the records. All of these cards that he has testified to, I would like to have properly marked, identified and introduced into evidence from 1956 to date. That will be Respondent's Exhibit No. 3.

(Telephone Toll Tickets, Southern Bell Telephone and Telegraph Company, for the months of June, 1956; July, 1956; August, 1956; September, 1956; October, 1956; December, 1956; January, 1957; February, 1957; March, 1957; April, 1957; May, 1957; June, 1957; July, 1957; August, 1957; September, 1957; October, 1957; November, 1957; December, 1957; January, 1958; February, 1958; March, 1958; April, 1958; May, 1958; June, 1958; July, 1958; August, 1958; September, 1958; October, 1958; November, 1958; December, 1958; January, 1959; February, 1959; March, 1959; April, 1959; May, 1959; June, 1959; July, 1959; August, 1959; December, 1959; January, 1960; February, 1960; March, 1960; April, 1960; May, 1960; June, 1960; July, 1960; August, 1960; September, 1960; October, 1960; November, 1960; December, 1960; January, 1961; February, 1961; March, 1961; April, 1961; May, 1961; June, 1961; July, 1961; August, 1961; September, 1961; October, 1961; November, 1961; offered and received in evidence and identified as Respondent's Exhibit No. 3.)

Respondent's Exhibit No. 3 which consists of the above listed telephone toll tickets is not being printed as a part of the record.

[fol. 521] W. C. PATTON, recalled as a witness for the Complainant and testified as follows:

Redirect examination.

By Asst. Attorney General Madison:

Q. Is there a Roy Wilkins connected with the respondent in this case, the NAACP?

A. There is.

Q. Do you know him?

A. I do.

Q. How long have you known him?

A. Oh, for the last twelve or fifteen years.

Q. You have known him since 1956 at any rate. Isn't that right?

A. Yes.

Q. Do you know what his official position is with the respondent in this case?

A. He is Executive Secretary.

Q. Do you know how long he has been Executive Secretary?

A. Offhand, I don't.

Q. Well, several years or more. Isn't that right?

A. I would say several years.

Q. Do you know a Ruby Hurley?

A. I do.

Q. Was she associated with you in NAACP work in Birmingham, Alabama before she went to Atlanta?

A. She was.

Q. How long has she been associated with you there?

A. Several years.

Q. What was her position in Birmingham?

A. Regional Secretary.

Q. Regional Secretary?

A. Yes.

Q. Did the NAACP have a regional office in Birmingham?

[fol. 522] A. Yes, it did.

Q. When was that regional office first opened?

A. I don't remember the year.

Q. Can you give us some judgment about the number of years?

A. Maybe five or six. Maybe, something like that.

Q. Was there any work done there in Birmingham for the NAACP before it became a regional office?

A. There was, yes.

Q. Did Ruby Hurley work there then?

A. I think from the beginning hers was a regional office. Hers was a regional office from the beginning. I don't think she did any work before that.

Q. Now, the regional office was moved from Birmingham to Atlanta. Is that correct?

A. That is correct.

Q. And Ruby Hurley went to Atlanta when the regional office was moved?

A. I think she did or sometime later.

Q. Now, you had occasion from 1956 through several years following to make various telephone calls and I will ask you first about Roy Wilkins both at the main office in New York and at his residence. Can you give us the phone number of Roy Wilkins' office that you called?

A. That was Bryant 9-1400. I believe that's the number.

Q. Well, I will ask you about the number of the Roy Wilkins residence in Jamaica, New York AX 7-9487. Was that his telephone number?

Attorney Gray: Your Honor, we object to the leading.

The Court: Well, it is discretionary with the Court. Go ahead.

The Witness: I don't remember his number there.

By Asst. Attorney General Madison (Continuing):

Q. Do you remember calling Roy Wilkins at the main office in New York and also at his residence from 1956 through 1961 at various times?

A. I think I did make some calls.

Q. Do you have any record available with you to show [fol. 523] the number that you called?

A. I do not.

Q. Did you know at the time you placed calls, if you did place calls, to Ruby Hurley in Atlanta—did you know her number?

A. Well, I don't know it from memory.

Q. Have you got any record of it?

Attorney Carter: One question, Your Honor. The name is Mrs. Ruby Hurley. Mrs. Ruby Hurley.

The Court: I think I have ruled on that once already. Go ahead.

By Asst. Attorney General Madison (Continuing):

Q. Did you place any phone calls to her in Atlanta after she moved from Birmingham to Atlanta?

A. I am sure I did.

Q. Do you recall the phone number?

A. I don't recall that number.

Q. Do you recall the phone number for the main office in Atlanta?

A. I do not.

Q. Do you recall any phone number connected with the NAACP?

A. Well, I called the national office and I think I called her regional office number sometimes.

Q. Well, state for the purpose of the Record, the numbers that you can recall.

A. I can recall Bryant 9-1400 and Murray 6-8888, I believe it is.

Q. That's in Atlanta?

A. That's in Atlanta.

Q. Do you recall placing calls to that number during the period of time I have asked you about from 1956 through 1961?

A. I think that I did.

Q. Is it your best judgment that you did do that?

A. I think I did.

Q. Now, the NAACP has a headquarters in Memphis, Tennessee, does it not? Is that correct?

[fol. 524] A. Well, not exactly a headquarters.

Q. Well, what is it that they have there?

A. They have a branch office.

Q. They have a branch office in Memphis, Tennessee?

A. That's right.

Q. During that period of time you have made any number of calls to and from that branch office, that is, to the branch office in Memphis, Tennessee from your home in Birmingham and calls from the branch office in Memphis,

Tennessee to your residence or office in Birmingham. Is that right?

Attorney Carter: What period of time are you talking about?

Asst. Attorney General Madison: From 1956 through 1961.

The Witness: I may have.

By Asst. Attorney General Madison (Continuing):

Q. Do you recall making them?

A. I recall some phones. Your question was two-fold.

Q. Well, can you answer it two-fold?

A. Well, I think I made some calls.

Q. Well, we will take the first fold first, the ones you made to the Memphis branch. How many of those did you make?

A. I couldn't recall how many.

Q. Did you make a number of them?

A. I am sure there was a number of them.

Q. Do you recall that telephone number?

A. I do.

Q. What is it?

A. Jackson 5-6057.

Q. Do you recall making any telephone calls at any time to the NAACP office in Richmond, Virginia?

A. I think I did.

Q. Do you recall that telephone number?

A. I do not.

[fol. 525] Q. Does Washington, D. C. have a main office or branch office of the NAACP?

A. It does.

Q. Did you have occasion to call that branch office from 1956 through 1961?

A. I may have, I am not sure about that.

Q. Do you know that telephone number?

A. I do not.

Q. Do you know an undertaker that lives in York, Alabama?

A. Yes, I do.

Q. What is his name?

A. His name is Mr. James R. Weatherly.

Q. James R. Weatherly?
A. Yes.
Q. Now, do you know another undertaker in Dothan, Alabama?
A. Yes, I do.

Attorney Carter: I object to that.
The Court: State your grounds.
Attorney Carter: I object to that on the grounds that—testing his knowledge of persons and officers of the NAACP or branches I think are within the purview of the issues in the case, but to ask him about an undertaker without establishing some foundation or connection with this case—we object to that as being irrelevant and immaterial and on the further grounds that in terms of his knowledge that this involves an invasion of his privacy at any rate, and we feel that a foundation must be established before any questions can be asked about his knowledge of the particular three people he is asking about. If he connects that with this case, then that's different, but to ask him if he knows an undertaker in this place and that place is something else again.
The Court: Overruled. Go ahead.
Attorney Carter: We except to that, if the Court please.

[fol. 526] By Asst. Attorney General Madison (Continuing):

Q. Do you know an undertaker in Dothan, Alabama?
A. I beg your pardon?
Q. Do you know an undertaker in Dothan, Alabama?
A. I do.
Q. What is his name?
A. His name is Mr. N. G. Hawk.
Q. Did you have occasion to make telephone calls from 1956 through 1961 to him?

Attorney Carter: I object, if the Court please, to asking this witness any questions about telephone calls to a particular person. That is not an issue involved in this case. He has a right to make a telephone call to anybody he wants to and the State has no right to ask him about telephone calls he may have made.

The Court: Overruled. I take it it will be connected up and if it is not, it will go out.

Attorney Carter: We except.

By Asst. Attorney General Madison (Continuing):

Q. You know C. W. Lee. I believe those are his initials? Is it Lee?

A. Lee.

Q. C. W. Lee. Has he been a past member of the NAACP?

A. I do not know.

Q. You do not know.

A. No.

Q. Have you had occasion to do any NAACP work with him?

A. I have not.

Q. He is an undertaker here in Montgomery, isn't he?

A. I think so.

Q. Is it your best judgment that he is?

A. He is.

Q. Do you know Robert L. Mathews?

A. I do.

Q. Is he a former officer or member of the NAACP?

[fol. 527] A. I think he is.

Q. Is he now, as far as you know?

A. He is now as far as I know.

Q. What position did he occupy when—what position did he occupy with the NAACP?

A. He was Treasurer of the State Conference.

Q. Where did he live?

A. In Montgomery.

Q. Did you have any occasion to work with him in NAACP work?

A. I did.

Q. When was that?

A. During my administration as President of the State Conference.

Q. What did you do together if you did work together?

A. It was a matter of handling finance.

Q. What was the method of handling finance? Was that here in Montgomery or was it State wide?

A. That was here in Montgomery.

Q. Here in Montgomery—

A. He was the Treasurer of the State.

Q. He was Treasurer of the whole State?

A. That's right.

Q. Your work with him dealt mainly with financial matters?

A. Financial matters.

Q. What was the nature of those financial matters?

A. Well, he wrote the checks and took charge of the money.

Q. Well, now, where did you get the money?

A. That came in from contributions from the various branches.

Q. In Alabama?

A. In Alabama.

Q. Now, did the various branches in Alabama, as the money came in, would they retain a certain portion for the branch and send a certain portion to the National office?

A. As far as I know.

Q. Well, now, don't you know?

[fol. 528] A. Well, I couldn't say that for every branch but that was the regulation.

Q. Well, that was the requirement, wasn't it?

A. That's right.

Q. If you would get two dollars, you would keep one and send one away or what was the division?

A. I think that was right.

Q. You think that's right.

A. Yes.

Q. Now, this is a picture and I show you what—well, I will hand it to you first so that you might look at it and after you see it, I will then ask you questions about it.

Attorney Carter: We would like to see it.

Asst. Attorney General Madison: I would like to show it to the witness first.

By Asst. Attorney General Madison (Continuing):

Q. Look at it good now. Now, do you know what that is a picture of?

A. Yes.

Q. What?
A. The regional office.
Q. Where?
A. In Birmingham.
Q. Does it corectly show what was there?
A. I think it does.
Q. Is that your best judgment that it does?
A. I think it does.

Asst. Attorney General Madison: If the Court please, we offer this photograph in evidence to be identified as Complainant's Exhibit No. 14.

(One photograph offered and received in evidence and identified as Complainant's Exhibit No. 14.)

[fol. 530] Redirect examination (Continued).

By Asst. Attorney General Madison:

Q. Is that sign there now?
A. I beg your pardon?
Q. Is that sign on the door there now?
A. It is not.
Q. When was it taken down?
A. I really don't know.
Q. Well, did you move that from that office?
A. I did not.
Q. Did you occupy it?
A. I did not.
Q. You never have occupied that office?
A. I never have.
Q. Well, who did occupy it?
A. Mrs. Hurley.
Q. Where was your office? Was it next to it?
A. It was not.
Q. Well, where was it then in reference to her office?
A. Down the hall.
Q. In the same building down the hall.
A. That's right.
Q. Do you know what this is a picture of?
A. I think this is a picture of the branch office.

Q. Do you know where?
A. In the Masonic Temple Building.
Q. In Birmingham?
A. Yes.
Q. Is that your best judgment that that is what this picture portrays?
A. That's my best judgment.
Q. Who occupied that office?
A. I shared it.
Q. Who did you share it with?
A. The Birmingham branch.
[fol. 531] Q. The Birmingham branch of what?
A. The NAACP.
Q. Are you still in that office?
A. I am not.
Q. Well, where did you move to when you moved from this office?
A. The Birmingham branch is not in existence now.
Q. Well, I asked you if you were still in that office.
A. I am not.
Q. Well, where did you move to?
A. I didn't move. The office is closed.
Q. This office is no longer open.
A. That's right.
Q. It is not occupied by you or by anybody connected with the NAACP as far as you know?
A. Not as far as I know.

Asst. Attorney General Madison: If the Court please, we offer this photograph in evidence.

(One photograph, offered and received in evidence and identified as Complainant's Exhibit No. 15.)

[fol. 533] Redirect examination (Continued).

By Asst. Attorney General Madison:

Q. What office is No. 622 in the Masonic Temple Building?
A. That's the State Coordinating office.
Q. The State Coordinating office of what?

A. The State Coordinating Office Association for Registration and Voting.

Q. Now, this photograph shows office No. 613, does it not?

A. It does. Yes.

Q. Now, look at this picture. Do you know what that picture portrays?

A. I do.

Q. What does it portray?

A. It says, "Ninth Congressional District, Alabama State Coordinating Association for Registration and Voting."

Q. Does this picture substantially portray what the office shows there and the writing on the door?

A. I think so.

Q. Now, I believe you said you worked with someone here in Montgomery in the financial end of the NAACP. Now, what is his name again? I have forgotten.

A. Mr. Robert L. Mathews.

Q. Robert L. Mathews?

A. Yes.

Q. Do you recall a membership campaign that was put on here in March of 1956?

A. I do.

Q. Would you look at this picture and tell us what that is?

Attorney Carter: Don't answer that question until we have seen it.

Asst. Attorney General Madison: I offer this photograph in evidence to be identified as Complainant's Exhibit 15-A. We do not offer any writing on the back and it has been stricken off.

(One photograph, offered and received in evidence and identified as Complainant's Exhibit No. 15-A.)

[fol. 535] Redirect examination (Continued).

By Asst. Attorney General Madison:

Q. Do you know what that photograph is? Do you know what that portrays?

A. It is a sign over the campaign headquarters.

Q. Do you know where that was?

A. I think this is the First Baptist Church here in Montgomery.

Q. Is that your best judgment?

A. Yes. That's my best judgment.

Q. You have been to that church a number of times, haven't you?

A. I have.

Q. Does that picture correctly portray what they had there in March of 1956?

A. I believe it does.

Q. Is that your best judgment that it does?

A. That's my best memory.

Asst. Attorney General Madison: We offer this in evidence as Complainant's Exhibit No. 16, if the Court please.

(One photograph, offered and received in evidence and identified as Complainant's Exhibit No. 16.)

[fol. 537] Redirect examination (Continued).

By Asst. Attorney General Madison:

Q. Do you know Dr. G. A. Rogers, Jr?

A. I do.

Q. Where did he live?

A. In Anniston, Alabama.

Q. Is he a former member of the NAACP?

A. I think he was a member.

Q. Did you do NAACP work with him?

A. I did.

Q. What was the nature of that work?

A. He was Vice-President when I was President.

Q. What did you two do together in Anniston, if anything, or if you did anything in Alabama?

A. Well, we attended meetings together and we worked out programs together.

Q. What kind of programs would you have?

A. Annual meeting programs.

Q. The only time you would be with him would be annually?

A. Well, at other times too. We were friends. We visited each other.

Q. Now, outside of this friendship that existed between you—I am more interested in your business relations on behalf of the NAACP. Now, will you tell us what those were?

A. Well, he was Vice-President and I was President of the State Conference and he became President when I became Field Secretary of the State Conference.

Q. What did the Vice-President do?

A. Well, there were numbers and sundry duties and responsibilities to help implement the program.

Q. Well, can you enumerate a little more in detail what some of those duties and responsibilities were?

A. Well, he shared the program and helped arrange the program and spoke at the meetings and presided at various sessions of the annual meeting.

[fol. 538] Q. Well, those affairs were all conducted here in Alabama. Is that right?

A. That's right.

Q. Do you know his telephone number in Anniston?

A. I really don't remember.

Q. Do you know Weatherly's telephone number in York?

A. I think I do, I believe—

Q. Did you ever do NAACP work with him?

A. I did not.

Q. Do you know whether he was a member of the NAACP prior to 1956?

A. I do not.

Q. Do you know whether the undertaker referred to in Dothan was a member of the NAACP prior to 1956?

A. I do not.

Q. What about Marion Hawk? Is that the one that was in Dothan?

A. Yes.

Q. Now, assuming that the evidence shows that you made seventeen calls to Memphis to the NAACP headquarters there—were you able to recall the phone number in Memphis? Did you give that to me?

A. I did.

Q. Now, assuming that you made eleven calls to Marion Hawk from 1956 to 1961, do you recall and did you give me his number?

A. I didn't. I don't recall that one.

Q. You don't recall that one?

A. No.

Q. Did I get from you the phone number of Dr. Rogers?

A. You did not.

Q. Do you know what that is?

A. Not from memory.

Q. And if there were sixteen calls made to him from 1956 to 1961, then that doesn't refresh your recollection any about the phone numbers?

A. It does not.

Q. Do you recall whether or not Ruby Hurley in Atlanta had an unlisted phone number?

[fol. 539] A. I am not sure.

Q. Did you have occasion to call here there at her apartment on NAACP business?

A. I did not.

Q. Would the phone number SY 4-8071 refresh your recollection any?

A. It started with SY but I don't recall the figures. I don't recall the digits.

Q. You don't recall whether it ended with the figure 1 or not, do you?

A. I don't recall the digits.

Q. Do you recall calling John Doar of the Department of Justice in Washington?

A. I do.

Q. He is a Government lawyer, isn't he?

A. He is.

Q. Now, I have listed here what looks like a Mrs. Flagg. Do you know anybody by the name of Flagg in Memphis?

A. Yes, I do.

Q. What is the name?

A. Mrs. Flagg.

Q. Do you recall making six calls to her during the period of time from 1956 through 1961?

A. I don't recall the number but I remember calling her.

Q. Well, I didn't ask you about the number but you don't remember the number, do you?

A. I do not.

Q. Now, I have another one that I can't quite make out here. It looks like Mrs. MacWain. Do you know anybody by that name?

A. I do not.

Q. Well, do you know anybody in Memphis close to that, for example, by name of McCuin?

A. McCuin.

Q. Do you recall making eleven calls to her from 1956 through 1961?

A. I may have.

Q. Do you recall that phone number?

[fol. 540] A. I do not.

Q. Do you know a Mrs. Crawford in Memphis, Tennessee?

A. I do.

Q. Did you make any phone calls to her from June of 1956 through 1961?

A. I may have.

Q. Well, do you recall any?

A. I may have. I think I did.

Q. Can you give us some idea about the number of phone calls you made?

A. I just don't recall.

Q. Now, she is in either the NAACP headquarters or a branch of the NAACP in Memphis, isn't she?

A. That's right.

Q. Do you recall the phone number of the Memphis branch?

A. I do.

Q. State that for the Record, then.

A. Jackson 5-6057.

Q. Do you know a man by the name of Currant?

A. I do.

Q. What is his name?

A. His name is Mr. Gloster Currant.

Q. What is the first name again?

A. Gloster.

Q. Gloster Currant?

A. Yes.

Q. Do your remember making any phone calls to him from 1956 through 1961?

A. I probably did.

Q. Now, he is in the New York branch or the New York office of the NAACP, isn't he?

A. That's right.

Q. Do you recall making any telephone calls to him?

A. I do not.

Q. Several or more?

A. Well, maybe two or three.

[fol. 541] Q. Now, did the attorneys for the NAACP here talk to you any about these phone calls last night after we adjourned here?

A. They did.

Q. What did they talk to you about?

A. They wanted to know the nature of the calls.

Q. Did you tell them during that conversation that you had made any of these calls?

Attorney Carter: I object, Your Honor.

The Court: What are the grounds of objection?

Attorney Carter: I object because of the fact that a communication between an attorney and a party is privileged.

The Court: Well, as I understand it, he is not a party to this cause. He is a witness. I don't think the objection is good. I overrule the objection.

Attorney Carter: We except.

Asst. Attorney General Madison: I called him as a witness—

The Court: No. He is not a party to the suit.

Attorney Carter: At this point he apparently is a part of this suit because the State is attempting to use him as a principal adversary.

The Court: I think he can always ask a witness if somebody talked about the case. I will let it in and give you an exception.

Attorney Carter: We except.

Asst. Attorney General Madison: What was the last question I asked him, Mr. Reporter?

The Reporter: Question. "Did you tell them during that conversation that you made any of these calls?".

Asst. Attorney General Madison: Had not made any of the calls that they asked you about.

The Witness: Will you repeat the question again?

Asst. Attorney General Madison: When you were talking to the attorneys for the respondent in this case, did you [fol. 542] tell them in the conversation that you had not made any of the calls that they asked you about?

The Witness: I did not.

Asst. Attorney General Madison: All right. That's all.

Recross examination.

By Attorney Robert L. Carter:

Q. Mr. Patton, what is your connection with the respondent, the NAACP, at the present time?

A. Field Secretary.

Q. How long have you been in that position?

A. Since 1958.

Q. Have you been working full time for the organization since 1958?

A. A part of that time.

Q. Isn't it a fact that you have been a full time employee since January 1st, 1958?

A. I have.

Q. Isn't it also a fact that in 1958 you worked on various projects?

A. I did.

Q. Now, beginning in 1958 and going back to June 1st, 1956, what was your connection with the NAACP then?

A. You mean beginning with June 1st, 1956?

Q. From June 1st, 1956 to December 31st, 1956?

A. I had no connection. I was on terminal pay.

Q. From June 1st, 1956 to December of 1956.

A. That's right. Terminal pay.

Q. Now, what is the significance of the June 1st date?

A. That's the date the NAACP was enjoined.

Q. Were you employed by or did you have any connection with the NAACP in 1957?

A. None whatsoever.

Q. Now, I want to—taking the period from June 1st, 1956 to the present time—well, let me ask you some more [fol. 543] questions first. In your capacity as an employee for the NAACP in 1958, 1959, 1960 and 1961, did you do any work in the State of Alabama?

A. I did not.

Q. The headquarters that you worked from for the NAACP, are they in Alabama?

A. They are not.

Q. Have you in terms of any activity, in terms of telephone calls, in terms of telephone conversations, or anything like that, have you done any of these things since June 1st, 1956?

A. I have not.

Q. Have you conducted any business for the association of any description or any kind within the State of Alabama?

A. I have not.

Q. Have you organized any chapters or the NAACP in Alabama?

A. I have not.

Q. Have you maintained any office of the NAACP in Alabama?

A. I have not.

Q. Have you solicited any membership for the respondent corporation in Alabama?

A. I have not.

Q. Or any local chapters or sub-divisions?

A. I have not.

Q. Or Wholly Controlled Subsidiaries of the NAACP in Alabama?

A. I have not.

Q. Have you solicited any contributions for the respondent?

A. I have not.

Q. That is, the NAACP in Alabama?

A. I have not.

Q. Or for any local chapters or sub-divisions or wholly controlled subsidiaries of the NAACP in Alabama?

A. I have not.

Q. Have you collected any membership dues?

A. I have not.

Q. Or contributions for the NAACP in Alabama?

[fol. 544] A. I have not.

Q. Or for any local chapters or sub-divisions or wholly controlled subsidiaries?

A. I have not.

Q. You have done none of these things, have you, Mr. Patton?

A. I have not.

Q. By any activities of any kind or description including telephone calls of any kind, telegrams, or any kind of communication with anybody in the State of Alabama since June 1st, 1956 to the present time.

A. I have not.

Q. All-right. Thank you. That's all.

Asst. Attorney General Madison: Your Honor, I believe we agreed at the pre-trial hearing that the matter contained in the transcript of Record of the United States Court of Appeals, Fifth Circuit, No. 18576, which was not a part of the Record in this case, that that could be used subject to objection. Now, Your Honor, I would like to introduce parts of that Record which are not parts of—

The Court: Is that the same one I have here?

Asst. Attorney General Madison: That's the one that we are going to use, Your Honor. That's the one I want to introduce into evidence. I want to introduce those parts of that Record which are not parts of the Record in this case. We wish to introduce into evidence those parts of that Record which are not parts—which are not a part of this case.

Attorney Carter: Well, what are they? Will you specify them, please?

Asst. Attorney General Madison: Well, I thought you were perfectly familiar with them.

Attorney Carter: Well, I want it specified for the Record.

Asst. Attorney General Madison: Well, first, I will specify for the Record all parts of the proceedings shown by the transcript of Record No. 18576 of the United States Court of Appeals, Fifth Circuit, that are not a part of the Record [fol. 545] of this case which is being tried here in the State Court. First, and separately, the Complaint filed by the

National Association for the Advancement of Colored People versus MacDonald Gallion and Bettye Frink, in the Federal District Court here in Montgomery and the exhibits attached thereto.

Attorney Gray: Many of these exhibits are a part of the Record.

Asst. Attorney General Madison: Well, without the exhibits.

Attorney Gray: Exhibit "G" is not in.

Asst. Attorney General Madison: All right, plus Exhibit "G" to the Complaint.

Attorney Carter: Exhibit "H" is not in, is it?

Attorney Gray: Yes. Exhibit "H" is in.

Asst. Attorney General Madison: If the Constitution and By-Laws are not a part of the Record in this case, then we wish to introduce them. I thought they were attached to the original Complaint as an exhibit, but I am just speaking from memory now.

The Court: All right. They are in.

Asst. Attorney General Madison: Respondent's Answer to the Bill of Complaint—no, strike that. Exhibit "H" goes in. The motion for the temporary restraining order. The motion for the preliminary injunction filed by the respondent, the NAACP, and the Order of Judge Jones on the 24th day of June, 1960. The two orders of Judge Jones dated June 24th, 1960 and all that appears on pages 132 through 162.

(Extracts from Transcript of Record, United States Court of Appeals, Fifth Circuit, No. 18576, National Association for the Advancement of Colored People, Appellant, versus MacDonald Gallion, Attorney General of Alabama and Mrs. Bettye Frink, Secretary of State, State of Alabama, Appellees. Appeal from the United States District Court for the Middle District of Alabama, filed U. S. Court of Appeals, October 20th, 1960, offered and received in evidence and identified as Complainant's Exhibit No. 17.)

[fol. 631] COMPLAINANT'S EXHIBIT NO. 18

THURSDAY, MARCH 22nd, A.D. 1956

COURT MET PURSUANT TO ADJOURNMENT

PRESENT THE HONORABLE EUGENE W. CARTER, JUDGE PRESIDING

THE STATE

#7399 vs.

M. L. KING, JUNIOR

INDICTMENT FOR VIO. SECTION 54, TITLE 14, CODE OF ALABAMA, 1940

This day came the State by its Solicitor, and came also the defendant in his own proper person and by attorneys; and the said defendant being duly arraigned upon the indictment for his plea thereto says he is not guilty.

And after taking of testimony on behalf of the State and after the State had rested its case, the defendant filed a motion to exclude all of the evidence introduced by the State; and said motion being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to exclude be and the same is hereby overruled.

And after the completion of all testimony in said cause; and after hearing said testimony and arguments of counsel, the Court being of opinion; it is considered and ordered by the Court, and it is the judgment of the Court that the said defendant is guilty, as charged in the indictment, and a fine of Five Hundred and No/100 ($500.00) Dollars was assessed against him by the Court.

And said fine and cost not being paid; and the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him says nothing. It is, therefore, considered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for one hun-

dred ~~forty days~~ for the fine; and the cost of this prosecution not being presently paid or otherwise secured, and the same being now ascertained and amounting to $184.50, it is further considered and adjudged by the Court, and it [fol. 632] is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for an additional term of 246 days in payment of said costs at the rate of 75 cents per diem, making in all 386 days during which said defendant is to perform hard labor for Montgomery County beginning from this day and ending on the 12 day of April, 1957.

Any questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant gives notice of appeal and requests a suspension of sentence pending said appeal; it is, therefore, considered and ordered by the Court that pending said appeal to the said Court of Appeals of Alabama this sentence be and the same is hereby suspended, and that pending said appeal the defendant may be admitted to bail in the sum of $1,000.00 to be made and approved as required by law.

THE STATE OF ALABAMA
MONTGOMERY COUNTY

I, John R. Matthews, Clerk of the Circuit Court of Montgomery County, hereby certify that the above and foregoing is a true and correct copy of the Judgment and Sentence of the Court in the case of THE STATE OF ALABAMA vs. M. L. KING, JUNIOR, as fully and completely as the same appears of record in said Court.

Witness my hand and seal of this Court is hereto affixed, this the 27th day of December, 1961.

/s/ John R. Matthews
Clerk, Circuit Court
Montgomery County, Ala.

(SEAL)

[fol. 633] Asst. Attorney General Hardin: Now, Your Honor, this one has been attested to by Mr. Charles Bricken, Jr., Clerk of the Court of Appeals, and indicates that the case of M. L. King, Jr., Appellant, versus The State of Alabama, Appellee, was appealed to the Court of Appeals on the 30th of April, 1957 and that the appeal was dismissed in the Court of Appeals, and this has been properly attested to by the Clerk of that Court.

(Dismissal of Appeal, Court of Appeals of Alabama, October Term, 1956, in the Case of M. L. King, Jr., Appellant, versus The State of Alabama, Appellee, dated April 30, 1957, with attached certification, offered and received in evidence and identified as Complainant's Exhibit No. 19.)

COMPLAINANT'S EXHIBIT NO. 19

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 1956

To the Clerk of the Circuit Court of Montgomery County, Greeting:

Whereas, the Record and Proceedings of the Circuit Court of said County, in a certain cause lately pending in said Court between

M. L. King, Jr., Appellant

and

The State, Appellee,

wherein by said Court, at the ..... Term, 19....., it was considered adversely to said appellant ....., were brought before our Court of Appeals, by appeal taken, pursuant to law, on behalf of said appellant .....

Now, it is hereby certified, That it was thereupon considered by our Court of Appeals on the 30th day of April, 1957, that the said appeal be and stand dismissed; and that it was further considered that the appellant, ...
[fol. 634] pay the costs accruing on said appeal in this Court and in the Court below .....

Witness Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 30 day of April, 1957.

/s/ Charles Bricken, Jr.
Clerk of the Court of Appeals of Alabama.

I certify that this is a true and correct copy of this dismissal in this cause.

/s/ Charles Bricken, Jr.
Clerk, Court of Appeals

Asst. Attorney General Hardin: The last one, Your Honor, this one is in the same case, the case of M. L. King, Jr. and as a result of the action of the Court of Appeals there was a Writ of Certiorari to the Supreme Court and on November 27th, 1957 the State Supreme Court entered this order. It says, "It is ordered by the Supreme Court of Alabama, on motion of the Petitioner, M. L. King, that the Petition for Writ of Certiorari to the Court of Appeals, heretofore filed in the above cause on August 26, 1957, be and the same is hereby dismissed at the cost of the Petitioner, M. L. King, for which costs let execution issue accordingly." The Petitioner himself dismissed this in the Supreme Court and this is properly attested to by J. Render Thomas, Clerk of the Supreme Court of Alabama. We would like to introduce this also and have it marked and identified as Complainant's Exhibit No. 20. The purpose of it being to show—

The Court: Well, I will let it in. I will let it in under the allegation and Answer.

Attorney Carter: We except.

[fol. 636] PHILIP M. LIGHTFOOT, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Asst. Attorney General Madison:

Q. State your name for the Record.
A. Philip M. Lightfoot.
Q. Where do you live?
A. Tuskegee, Alabama.
[fol. 637] Q. Were you living in Tuskegee in November of 1954?
A. Yes.
Q. Did you hold any official position with the City of Tuskeegee at that time?
A. Yes.
Q. What position did you hold, sir?
A. Mayor.
Q. I show you here a pamphlet under date of November 21st, 1954 and I will ask you to examine it and state whether or not you received that through the mail.
A. I did.

Attorney Gray: I would like to see it.

Asst. Attorney General Madison: I should like to state for the purpose of the Record that the questions we are going to ask Mayor Lightfoot and the pamphlet that we are seeking to introduce into evidence will be limited solely to the question of doing business in the State of Alabama. I will state further for the Record that these pamphlets purport to show any number of people—not for the purpose of securing them as individuals but for the purpose of limiting this to the doing of business in the State by the NAACP.

The Court: Go ahead.

By Asst. Attorney General Madison (Continuing):

Q. Did you examine this? Is that the one you received under that date?
A. That's right.

Asst. Attorney General Madison: We wish to introduce this into evidence at this time, Your Honor, for the purpose indicated.

(NAACP NEWS, Volume 1, Organ, Tuskegee NAACP Membership Committee, November 21, 1954, Number 4, offered and received in evidence and identified as Complainant's Exhibit No. 21.)

[fol. 643] Direct examination (Continued).

By Asst. Attorney General Madison:

Q. Now, I show you another pamphlet dated November 28, 1954. Will you look at that pamphlet and testify whether or not you received that through the mail?

A. I did.

Asst. Attorney General Madison: If the Court please, I offer this one in evidence to be identified as Complainant's Exhibit No. 22.

(NAACP NEWS, Volume 1, Organ, Tuskegee NAACP Membership Committee, November 28, 1954, Number 5, offered and received in evidence and identified as Complainant's Exhibit No. 22.)

[fol. 645] Cross examination.

By Attorney Robert L. Carter:

Q. I want to show you two things that you have examined before which are identified as Complainant's Exhibit No. 21 and Complainant's Exhibit No. 22 which purport to be literature from the Tuskegee NAACP. Is that correct?

A. That's what it says here.

Q. The dates on those two pamphlets are what dates?

A. One is dated November 28th, 1954 and the other is dated November 21st, 1954.

Q. Have you received any pamphlets of this kind since June 1st, 1956?

A. I couldn't recall.

Q. Have you received any?

A. I couldn't recall that I have.

Q. Do you think you have received any?

A. Since what date?

Q. Since June 1st, 1956.

A. I wouldn't think so. I don't know. I couldn't say positively whether I have or whether I have not.

Q. You furnished these to the State, did you not?

A. Including a file that included those in another case.

Q. Now, you furnished to the State these documents [fol. 650] which you have received from the NAACP. Now, are there in your files or do you know whether there was in your files or did you find in your files any similar document or any other kinds of documents from the NAACP since June 1st, 1956?

A. I don't recall the dates.

Q. Do you think there were?

A. Well, I have no idea.

Q. Well, why did you furnish the two that have been introduced into evidence to the State?

A. Well, that was another case. It did not involve the NAACP but it involved that file in which all these things were in.

Q. I see. This information was introduced in another case.

A. I don't know whether it was ever introduced but it was in the file which the Attorney General's office picked up or asked for.

Q. When was that?

A. Oh, it has been three or four years ago or four or five years ago. I don't recall the exact date.

Q. Would it have been in 1958, do you think?

A. Possibly.

Q. Would there have been at that time in that file in which those pamphlets were present all of the pamphlets that you had received up to that time from the NAACP?

A. Would there be others?

Q. Would there have been in that file all the pamphlets which you have received from the NAACP up until the time of that case?

A. Well, I couldn't positively state that because that file included a lot of pamphlets and papers that were kept particularly in that file and not all of it pertained to the NAACP.

Q. You can't say at the present time whether you received any information—any of these pamphlets since that time.

A. No, I couldn't.

Q. All right. That's all.

Asst. Attorney General Madison: Now, Your Honor, yesterday we had some discussion about Dr. Taggart, a [fol. 651] dentist in Birmingham, who sent a statement here from a doctor stating that he was unable to attend Court and we immediately had Mrs. Taggart summoned as one or the other or both of them will be material witnesses in this case. Now, the Register of the Court has received this telegram which I would like to read to Your Honor. "Mrs. E. W. Taggart is ill and under our care and will be unable to attend Court today and should be able to appear in Court within two weeks." It is signed by Dr. Charles L. James. I call the Court's attention to that because the next evidence that we wish to go into will involve these two people. I have no knowledge of it other than the telegram and the doctor's certificate and I will say though that it certainly is a coincidence.

The Court: Well, you may have the Sheriff of Jefferson County make an investigation for the Court and see if that condition actually does exist.

Asst. Attorney General Madison: Your Honor, we will proceed and see how far we can get here. It may be that we can proceed without one or the other of them and we will at least undertake to do so.

DR. C. J. REHLING, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Asst. Attorney General Madison:

Q. State your name for the Record, sir.

A. My name is C. J. Rehling.

Q. What is your occupation, sir?

A. I am the State Toxicologist and Director of the State Crime Laboratory.

Q. How long have you been connected with the State in that capacity?

A. In that capacity, since 1945. I have been with that department though for twenty-three years.

[fol. 652] Q. Do you have with you a paper which purports to be the original application of Mrs. Taggart for a driver's license?

A. Yes, I do.

Q. May I see it?

A. Yes, sir.

Asst. Attorney General Madison: Your Honor, I wish to state for the Record that we have another witness who will establish this as the original. Now, doctor, how is this driver's license signed?

Attorney Gray: May we see it?

Asst. Attorney General Madison: Yes, surely. Here it is.

The Witness: It is signed here, "Essie Wilmer Taggart."

Attorney Carter: Your Honor, we are going to object to the introduction of Mrs. Taggart's driver's license or application for driver's license or for anything of that kind. As a matter of fact, Your Honor, we are just astounded that this would be introduced in evidence or attempted to be introduced into evidence. Mrs. Taggart has not been connected with this case in any way so far as we know—

The Court: What would be the purpose of it?

Asst. Attorney General Madison: The purpose of it, Your Honor, would be to connect it with this which is under date of 1960, I believe, for a comparison of handwriting to prove that it is the same handwriting.

Attorney Carter: Well—

Asst. Attorney General Madison: Your Honor, while they are looking at that, may I qualify the witness?

The Court: Yes, go ahead.

By Asst. Attorney General Madison (Continuing):

Q. Doctor, have you had any experience in the comparison of handwriting to determine whether it is the same?

A. Yes, I have.

Q. How many years of experience have you had?

A. Twenty years. I started back in 1941.

Q. During that time, have you examined many different [fol. 653] specimens of handwriting to determine their similarity or sameness?

A. Yes, I have.

Q. Doctor, in the event that I don't know all of the qualifications of an expert in handwriting, will you state for the Record the rest of your qualifications.

A. I have especially studied the subject and leading texts on the matter over those years and have acquired the current texts and have kept abreast of the texts that have come out during that period. I know several of the leading men in this field and have been closely associated with them. Some of the leading texts are Osburns Question Documents and Hiltons Suspect Documents which I think are tops in the field. I have examined a great many of these and have supervised others in my department who have done that type of work also. I have given testimony in a great many Courts concerning my findings.

Asst. Attorney General Madison: If the Court please, I offer this application for driver's license into evidence which I believe is required to be sworn before a Notary Public. I offer this in evidence and we will substitute a photostat at a later time.

(Application for Operator's License. State of Alabama, No. 146834, of Essie Wilmer Taggert with attached affidavit, offered and received in evidence and identified as Complainant's Exhibit No. 23.)

[fol. 656] Direct examination (Continued).

By Asst. Attorney General Madison:

Q. Now, doctor, I show you what purports to be a letter under date of December 16th, 1960 or part of an envelope of that date with an address on it as shown there. I will ask you to state whether or not the handwriting on either one or both of those papers I have just handed to you are in the handwriting of Mrs. Taggert.

Attorney Carter: I object to that, if the Court please.

The Court: I wonder if the question wouldn't be, is the handwriting which appears on the application for a driver's license, is that the same as appears on this letter?

Asst. Attorney General Madison: Thank you, Your Honor.

The Court: I think something like that would be all right.

Asst. Attorney General Madison: Mr. Reporter, will you read the Court's question to the witness?

Attorney Carter: I object to the line of questioning, Your Honor. There has to be a connection—in any of the evidence introduced into this Record, there has to be some connection made between—Mrs. Taggart has to be connected with the respondent in some way in order for this to be material, if the Court please. Now, this merely shows that Mrs. Taggart applied for a driver's license and wrote a letter and that does not make that the act or acts or show any connection with the acts of the respondent. We object, Your Honor, to this evidence coming in.

Asst. Attorney General Madison: Did Your Honor examine this portion of it—the letter part of it and the form letter part of it?

The Court: Yes. I think it has some evidential value. I will let it in and give you an exception.

Attorney Carter: We except.

Asst. Attorney General Madison: Well, then, Your Honor, before we go any further, I believe we will get back to Your Honor's question. You suggested a question we should ask and I will ask the Reporter to read the question.

[fol. 657] The Reporter: Question. "I wonder if the

question wouldn't be, if the handwriting which appears on the application for a driver's license, is that the same as appears on this letter?"

By Asst. Attorney General Madison (Continuing):

Q. Is the handwriting which appears on the driver's license the same as that which appears on these two papers?

A. The signature on this letter here which appears as "Dr. Taggart and Essie"—I have studied it and the details of the signature on the driver's license about which I have just made a statement and from my findings there, microscopic and otherwise, it is my opinion and conclusion that they were written by one and the same person. I am unable to identify the writer of the address on the envelope. I do not have sufficient standards to permit that identification.

Q. What did you use other than the original driver's license for comparison?

A. I used signatures appearing on certain documents of record in the Probate Court—the Probate records in Jefferson County on which appears the signature of Essie Taggart and on this particular document the name appears as "Essie Bolden Taggart". The signatures were on two different documents in the records of the Probate Court in Jefferson County which acknowledged the satisfaction of mortgages, I believe.

Q. On some one or more of those instruments you referred to, did you examine those in person in Birmingham?

A. Yes. I examined the original records there.

Asst. Attorney General Madison: Now, Your Honor, we introduce these in evidence.

Attorney Carter: Now, as I understand it, the only thing you can possibly introduce into evidence under the Court's ruling—the envelope—the top piece has not been identified.

Asst. Attorney General Madison: I think Your Honor ruled that it might be admitted for whatever evidential value it had.

Attorney Carter: Not the—a comparison was made between the handwriting of Mrs. Taggart on the application [fol. 658] for a driver's license and on a piece of paper

which you are seeking to introduce. The witness testified that his examination indicated that the handwriting on one of the pieces of paper and the driver's license were one and the same.

The Court: Well, let it in as to the driver's license and the letter.

Attorney Carter: He could not identify the envelope—

Asst. Attorney General Madison: He has already admitted it into evidence—

Attorney Carter: He has not admitted the envelope into evidence.

The Court: Well, I question letting the envelope in. In view of what the doctor said, I am kind of doubtful about the envelope. The letter itself would be admissible.

Asst. Attorney General Madison: Now, did your Honor rule on this?

The Court: Did I what?

Asst. Attorney General Madison: Has your Honor ruled on this portion which this came in? Not as to the handwriting, Your Honor, but as to the date of the proceedings are material and the address, if the Court please.

The Court: Well, let me withhold judgment on this unless it is connected up a little more, but I am clear that this is admissible.

Asst. Attorney General Madison: Your Honor—

The Court: Well, the ruling of the Court is that the envelope is out for the present unless it is connected up later on. It might come in then but like it is, I don't think it is admissible.

Attorney Shores: If the Court please, we take exception to the Court's ruling on the admissibility of the letter.

Attorney Carter: We take an exception on the admissibility of the letter and the driver's license.

The Court: All right. You may assign any grounds you like.

Asst. Attorney General Madison: Your Honor, I have no further questions for the witness.

[fol. 659] The Court: All right. Proceed.

Asst. Attorney General Madison: Your Honor, it has just been called to my attention that the address on that envelope is the same as appears on the driver's license and

I think that fact would connect it. Just a minute. That's not the driver's license. Is there any address on the driver's license? Here is the address on the driver's license. It is up at the top there and you can see it.

Attorney Gray: He testified that it was not the same handwriting and it was shown that Mrs. Taggart didn't address that letter.

The Court: Well, I believe it has evidential value. I will let the envelope in now since it has been called to the attention of the Court that the same address is on the envelope as on the other things here. You may have an exception to the Court's ruling.

Attorney Carter: Now, may I have those things you introduced into evidence? Now, we—if we have not taken an exception to the introduction of this envelope, for the Record, we do it now. If we have not taken an exception, we do it now, Your Honor.

The Court: Yes. You may assign any grounds you like.

(One Form Letter, dated Christmas, 1960, offered and received in evidence and identified as Complainant's Exhibit No. 24.)

[fol. 661] (Front Portion of Envelope, dated Birmingham, December 16, 1960, offered and received in evidence and identified as Complainant's Exhibit No. 25.)

Cross examination.

By Attorney Robert L. Carter:

Q. Now, I'm sorry, I have forgotten your name. What is your name again?

A. Rehling.

Q. Does your expert teaching enable you to tell whether this piece of paper I am showing you now which is the envelope—whether or not it contained this sheet?

A. No. I can't state that.

Q. As a matter of fact, you don't know whether these two pieces of paper came together or not, do you?

[fol. 662] A. I have no original knowledge of that. No.

Q. Now, I gather that your testimony was that as between the application for a driver's license and the letter which has been identified as Complainant's Exhibit No. 24—that the signatures are one and the same.

A. It was my opinion that they were written by one and the same person.

Q. But you are not able to say that this was written by the same person that wrote these other two—the envelope?

A. I have no judgment on that envelope.

Q. You have no judgment.

A. That's right.

Q. Do you know whether the addressee on this envelope—do you know whether they received this particular letter?

A. No, I do not.

Q. You don't know what was in the letter or what they received or what not, do you? All you are testifying to is in terms of the similarity of the handwriting.

A. That's right. These documents were submitted as you see them there to me and I made my series of tests and my findings I have already testified to here.

Attorney Carter: Now, I want the Record to be clear that the torn piece of paper which appears to be an envelope identified as Complainant's Exhibit No. 25 which I have questioned the witness about and he testified that he could not identify the handwriting.

By Attorney Robert L. Carter (Continuing):

Q. Doctor, do you know the addressee on Complainant's Exhibit No. 25?

A. No, I do not.

Q. You are not familiar with that at all.

A. No.

Attorney Carter: If the Court please, in view of the testimony of the witness, we move to exclude the envelope identified as Complainant's Exhibit No. 25 from evidence under the hearsay rule.

The Court: Motion denied.

Attorney Carter: We take an exception, if the Court please. I have no further questions for the witness.

[fol. 663] HARRY COBBS, having been duly sworn, was called as a witness for the Complainant and testified as follows:

Direct examination.

By Asst. Attorney General Hall:

Q. What is your name?
A. My name is Harry Cobbs.
Q. Where do you live?
A. I live in Birmingham, Alabama.
Q. What is your employment?
A. I am with the First National Bank of Birmingham, Alabama.
Q. What is your capacity with the bank?
A. Assistant Manager in the Bookkeeping Department.
Q. In connection with your duties there, do you have access to what is known as signature cards for depositors?
A. Yes, I do.
Q. In response to a subpoena issued at our request, did you bring certain records with you?
A. Yes, I did.
Q. Do those records pertain to the accounts of Dr. Ernest W. Taggart and Essie Bolden Taggart?
A. Yes, they do.
Q. Do you have the originals of those cards with you?
A. Yes, sir.
Q. May I see them, please?
A. Yes, sir.
Q. Now, I would like for you to look at these cards again and tell the Court what address appears on there as being the address of Mrs. E. W. Taggart or Essie Bolden Taggart?
A. The address shown is 330 12th Avenue, North, Birmingham.
Q. Did you have photostat copies made of those cards?
A. Yes, we did.
Q. Those cards are a part of the official records of the [fol. 664] bank, are they not?
A. Yes, they are.

Q. Will you look at these and see if they are photostat copies of those cards?

A. Yes, sir. These are photostats of these cards.

Asst. Attorney General Hall: Your Honor, in lieu of the originals, I would like to offer into evidence copies of those records as the originals have to go back to the bank.

Attorney Gray: Your Honor, we object, not to the copies necessarily, but to the relevancy of this whole thing—

The Court: Well, then, you don't object to the form of the secondary evidence?

Attorney Gray: No, sir.

The Court: Well, I think they are admissible on the merit of the thing and if there is no objection to the form then he may take the originals back with him. You have an exception to the ruling of the Court.

Attorney Gray: Thank you, Your Honor.

(Address Cards, Form 47-3M-12-55-44-B, Main Office, The First National Bank of Birmingham, Alabama, dated January 31, 1957 and February 8, 1957, offered and received in evidence and identified as Complainant's Exhibit No. 26.)

[fol. 666] (Address Cards, Form 44-GM-2-42, The First National Bank of Birmingham, Birmingham, Alabama, dated June 4, 1952 and July 2, 1954, offered and received in evidence and identified as Complainant's Exhibit No. 27.)

[fol. 667] Asst. Attorney General Hall: Now, Your Honor, before Your Honor considers the case I would like you to look at the signature on this letter that has already been introduced into evidence as Complainant's Exhibit No. 24 and compare it with the signatures on these two copies here.

Direct examination (Continued).

By Asst. Attorney General Hall:

Q. Your bank is located in Birmingham, is it not?
A. In Birmingham, yes.
Q. That's in the State of Alabama.
A. Yes, sir.
Q. All right, sir. That's all.

Attorney Carter: No questions.

Asst. Attorney General Madison: Now, we have one more witness, Your Honor, and it is almost adjourning time and I don't know what Your Honor's wish is in regard to that but he will be a short witness but he isn't here at the moment—

The Court: Is he available?

Asst. Attorney General Madison: It is Captain Godwin and he has been here but he is not here at the moment—

The Court: When can you get him?

Asst. Attorney General Madison: Well, Your Honor, the purpose of this witness' testimony will be on the question of the driver's license and that's all.

The Court: Well, the other side might stipulate that. I don't know.

Attorney Gray: Well, we don't want to waive our objections to it at the introduction—

The Court: Well, you objected to the relevancy as I understand it and the materiality of it, but there—would there be any objection to somebody testifying that they are the original driver's licenses instead of bringing them down here and stipulating that—

[fol. 668] Asst. Attorney General Madison: Is it agreed that this is the original application—

Attorney Gray: Yes, with the understanding that we are not waiving our objections to the relevancy and materiality—

The Court: Oh, yes. You are insisting on it as to the relevancy and materiality.

Attorney Gray: That's right, Your Honor.

The Court: All right. The Record will so show.

Asst. Attorney General Hall: We rest, if the Court please.

RESPONDENT'S MOTION TO DISMISS COMPLAINT, ARGUMENTS THEREON, AND DENIAL.

Attorney Shores: If the Court please, the respondent would like to move at this time that the complaint be dismissed on the grounds that the complainant has failed to carry the burden of proof in making out a prima facie case. All of the testimony as adduced by the complainant has not in any way been connected with the respondent. The very first witness, Mr. Culpepper, testified as to a meeting in Atlanta. It apparently was an attempt to show that the NAACP was still operating in Alabama but there was nothing so far to connect the NAACP, that is, the respondent, with the activity as a result of that meeting or with any activity in the State of Alabama. Now, apparently it is their whole theory that instead of attempting to prove irreparable injury, their entire theory has been that a temporary injunction was granted restraining the operation of the NAACP. There has been no testimony that even attempted to show any injury done to the State that would require the injunction. The various telephone calls indicated that there was no connection with the respondent. These telephone calls were by an individual who had formerly been a member of the local branch of the NAACP and who was a member of another organization as he could have been a member of, for example, the P. T. A. or the Elks Club or numerous other civic organizations that would certainly entitle him to make telephone calls to friends and associates outside of this State. The injunction specifically ordered certain things and nowhere has the Complainant attempted to show or in any degree shown that any of these items were violated. They put the chief witness, which was Mr. Patton, on the witness stand and after interrogating him [fol. 669] on cross examination he categorically denied every specific injunction directed at the respondent to cease and desist from its operations in the State of Alabama. Now, that was the State's own witness. He was not an adverse witness where it was necessary to cross examine him on the part of the petitioner but he answered all of the questions directly in a way the plaintiff requested him

to answer the questions and on cross examination he specifically denied that he had performed any operations enjoined by Your Honor's order. So, for that reason, Your Honor, they have failed to make out a prima facie case. We certainly do not see where the Complainant is entitled to have its complaint sustained and we respectfully submit that in view of that fact the complaint should be dismissed and the injunction dissolved.

Asst. Attorney General Madison: I think I have already pointed out to Your Honor that the original Complaint in this case not only sought a temporary injunction against the activities of the NAACP in Alabama but also sought an ouster of the NAACP from those activities which they were then engaging in within the State of Alabama. We have not sought by these proceedings to bring in any question of interstate activities but sought to show only acts which were intrastate in character. Now, reviewing some of the law that might be applicable to a situation of this kind, as Your Honor probably well knows, no foreign corporation has any Constitutional rights to come within the State of Alabama. As I tried to point out in the beginning of the case, when a corporation enters this State and has been granted a license to do business in this State and paid the fees required by law, if it has expended its monies and invested in its properties and acquired certain rights here, then the degree of proof required to keep one out of the State and not to infringe on any of its Constitutional rights which may be granted to it by the Federal Constitution, then that is one situation. However, before you get into a State and before you qualify to do business in a State, if you haven't done that, in violation of the laws of the State, which this evidence clearly shows, the State may do this type of proceeding brought by the Attorney General on behalf of the State, bar such a corporation from activity [fol. 670] within the State of Alabama. Now, we have shown by the evidence here, and I think without dispute, many acts of doing business in furtherance of the New York charter which was granted to them in their Articles of Incorporation. It is not necessary to enumerate all of them but there are any number of instances in which this corporation has done business in the State of Alabama since 1918

and has never qualified to do business here. Now, we have gone beyond that and attempted to show by the evidence certain acts and conduct on the part of the respondent corporation within the State which in some instances, we say, violates the laws of the State of Alabama and in other instances, we say, it violates the customs and by that I do not mean any custom of segregation and I am not referring to any Constitutional right of segregation or integration. I think we have a policy and custom in this State that lawyers for any corporation or for anybody else do not deliberately make false charges and accusations against public officials and officers in this State and then call meetings of the press, radio and television and broadcast it all over the United States and in foreign lands and then come back into a Court and say we have no evidence of this and that the accusations are false and, therefore, we withdraw them. You cannot withdraw the harm that has been done in many, many places both within and without the State by such an activity. The evidence shows that there has been going on here in times past what has been referred to as a boycott in connection with Negroes ceasing to ride the buses. The evidence in this case is that the NAACP gave moral support and financial support to that movement. The evidence in this case is that that boycott was an illegal boycott. That is giving aid and comfort in the violation of the laws of the State of Alabama whether you want to call it an aider or an abettor or whatever you want to call it. Our case does not center, as we stated at the pre-trial hearing on whether or not they have engaged in activities since 1956 so as to be adjudged in contempt of Court for so doing. We stated to Your Honor that that was only a part of a series of acts which would constitute good and sufficient cause for the State to ask this Court to permanently enjoin them for their operations in the State of Alabama. The evidence on the question of whatever their doing busi-
[fol. 671] ness since 1956 has been, would be the evidence of the Taggart solicitation of funds on a form which I submit the inference may be drawn was prepared by the NAACP and attached to the bottom of it there was a remittance slip to the NAACP of the money to be contributed and also the various telephone calls. I will say this. Coun-

sel referred to those calls by W. C. Patton all over the United States as being calls to his friends and I will say that he did run up a tremendous telephone bill talking to his friends in New York in the office of the NAACP and to the home of Roy Wilkins of the NAACP and at the home office in New York, and I believe I may refer to that, and in Washington to the NAACP and in Memphis to the NAACP and the former President and Vice-President or maybe both, Rogers, over in Anniston and, I expect, a friendly relationship did exist between all of those people but I think it is rather a reasonable point in saying that an inference can be drawn from that evidence that there was some business discussed in those conversations too. There is ample evidence before this Court to sustain the complaint and the amendments which Your Honor has allowed in here to justify the prayer of the complaint which the State asked for. We say that the motion which has been made by the respondent to dismiss should be denied.

The Court: You may have the close on the motion if you wish.

Attorney Shores: Your Honor, in closing, counsel for the complainant indicated that calls to Washington were to the NAACP and there was no evidence that the calls to Washington were to the NAACP. There was evidence of a call to one of the Justice Department's men in Washington and it was brought out that Mr. Patton is an employee of the NAACP which now operates outside of the State. That was not denied. Naturally, it would call for some telephone calls outside of the State but there was an affirmative denial of any activities within the State. The letter that was presented which attempted to indicate that Dr. and Mrs. Taggart had sent a letter to somebody, the person not identified, the State's expert witness giving the opinion that the letter signed and the addressed envelope was not in the same handwriting and there was no evidence that the letter actually was mailed by Dr. or Mrs. Taggart but just a supposition. It was not ascertained where it came from [fol. 672] and we submit that does not make out a prima facie case as an individual does have a right to engage in Civil Right activities which seems to be what this organization is being prosecuted for. Even though he is not a mem-

ber of the NAACP, I think it is common knowledge that there are a number of other organizations conducting some similar activities of the NAACP, such as, the Elks Lodge for that matter. To penalize a respondent because an individual who has been connected with it and has made certain telephone calls in connection with other business activities certainly would not be grounds for invoking the harsh remedy of ousting an organization that for years has helped maintain and establish democratic principles of this country. An organization that is looked on with high regard and faith in its efforts to promote citizenship everywhere except in our own State and the State of Mississippi, so to speak. We submit that for those reasons and Your Honor may take judicial notice that there is a specific statute embodied in the laws of this State which prohibit an individual who has been a member of the NAACP from taking out a license to make loans which happened since the injunction was rendered against this organization. We say that this is a matter of persecuting this organization rather than an attempt to oust an organization for legitimate purposes. Again, we would like to reiterate that in the absence of an express statute to oust except for an abuse or misuse of its powers, that the organization should not be ousted. We submit that the activities of the NAACP indicated by the first decision of the Supreme Court in the case of the NAACP versus The State of Alabama establishes the fact that the NAACP insofar as it has been acting in this State has been acting for its members and the members of the NAACP identities are the same, and it does not come within the purview of the laws governing corporations of a business nature and to oust it is a violation of the Constitutional rights of the NAACP and its members in the State of Alabama under the First and Fourteenth Amendments of the Constitution of the United States, and for this reason and for failure to introduce testimony making out a prima facie case, we submit that this complaint should be dismissed.

[fol. 673] The Court: I don't think the motion to dismiss is well taken and the motion is denied. You may have an exception to the Court's ruling.

Attorney Shores: We except.

Attorney Carter: The respondent would like to call as its first witness, Mr. Roy Wilkins.

Roy Wilkins, having been duly sworn, was called as a witness for the respondent and testified as follows:

Direct examination.

By Attorney Robert L. Carter:

Q. Will you give your name and place of residence for the Record, please.

A. My name is Roy Wilkins and I live at 147—15th Village Road in Jamaica, New York.

Q. What position do you occupy in respect to the respondent organization in these proceedings?

A. I am the Executive Secretary.

Q. You are familiar with the present proceedings, are you not, Mr. Wilkins?

A. I am.

Q. What is the organizational structure of the NAACP, Mr. Wilkins?

A. It is organized with the top policy making body at the Annual Convention. They elect the delegates at the annual convention and adopt resolutions which become the policy of the organization and the Board of Directors is also elected by the membership which meets eleven times a year and has the responsibility with the Convention of carrying out this policy. It can also add to and alter within the Constitutional limitations and under these are the Board of Directors and the administrative staff with the Executive Secretary and the various other staff members who carry out the policy with the membership. The member-[fol. 674] ship is scattered in fifteen hundred local chapters in some forty-seven or forty-eight States. I am never sure exactly. I understand we did not have a chapter in Maine and now we have two chapters in Maine, but I think the membership is scattered in about forty-seven States. Of course, we have no chapters in the State of Alabama.

Q. Now, can you briefly explain what the aims and purposes of the NAACP are, Mr. Wilkins?

A. It was organized to secure the Constitutional and citizenship rights of the Negro minority in this country. To secure those rights which are set forth for all citizens under the Constitution of the United States and as contained in the first Ten Amendments and the Bill of Rights and also the Thirteenth, Fourteenth and Fifteenth Amendments, of course, and those rights which have been delineated by the Federal Courts and embodied in Federal Law. The broad general purpose is to secure their rights and to do away with discrimination and segregation which denies them these rights and to attempt to get rid of practices and customs and laws local, State and National which have the same effect. The general procedure since the beginning of the association has been to proceed in a lawful and legal way and in the way any other American corporation proceeds that has the same general objectives. We use the Courts of the land. In fact, I think, we have become known among some of our rivals as a legalistic organization. This is a sort of inverted compliment because it means that we do proceed according to law, but aside from our activities in the Courts which began in 1915 in a case arising in Oklahoma and I might point out that that activity has run up to this day—aside from Court activity, we engage in Legislative lobbying just as the National Association of Manufacturers does. Then we use the tried and true American method of persuasion and education. For this purpose, our people are organized and they function together in support of the objectives of their association. We have used all of the methods of public education including pamphleteering, speech making, mass meetings, rallies, protests, pickets and parades and demonstrations of all kinds. It has become fashionable to say that these are un-American but I think we all remember that our country started with the Boston Tea Party and this was nothing more than a boycott dem-[fol. 675] onstration in Boston harbor of the people who resented the fact that the British Parliament was imposing a Stamp Tax without the Colonists having representation in the Legislature. We object on the same basis to the non-representation that exists in our country today. This is in general the way we proceed.

Q. Now, does the NAACP participate in any—does it condone or engage in violence to secure its objectives?

A. We have never employed violence.

Q. Now, if you know, when was the first affiliate of the respondent organization chartered in the State of Alabama and where?

A. I am sorry but I don't have the exact date but it was in 1918 that the first Alabama Chapter was chartered.

Q. Do you know where it was chartered?

A. I am not sure.

Q. Do you know whether or not the organization had functioned and had chapters in the State of Alabama from 1918 until June 1st, 1956?

A. Yes, it did, continuously.

Q. When did you become an officer of the respondent corporation?

A. In August of 1931.

Q. Well, between 1931 and June 1st, 1956, to your knowledge, had the corporation been advised by any officials in Alabama that it was in the State of Alabama illegally?

A. No. We would have been the first to have heard about such an action. Not only were we not advised but none of our Alabama chapters were advised.

Q. Is the NAACP a commercial organization? Does it have the business activities of the kind one would attribute to commercial enterprises? What, in effect, is the business of the organization?

A. We have no commercial activity. We don't sell uniforms like some fraternal organizations do. We have no profit making, and, in fact, under our charter we cannot engage in any profit making or commercial activity. We handle no—our business as far as we are concerned is not buying and selling and making a profit on a commodity or even of an idea. Our business is to get rid of inequalities in citizenship.

[fol. 676] Q. Is the organization a tax exempt organization under Federal Law?

A. It is. That is, it is exempt from paying taxes.

Q. It is exempt from paying taxes.

A. But contributions to it are not tax deductible, for income tax purposes.

Q. Mr. Wilkins, if you recall, did you have any communication from the present governor and the former Attorney General, John Patterson, in the year 1956? Do you recall that?

A. A communication?

Q. Yes. Well, at any rate, I will show you this Record which has been introduced into evidence and I call your attention to Page 97 to refresh your recollection.

A. Oh, yes. I recall this. This was a routine inquiry. We received a number of them. It is a request for a copy of our incorporation papers.

Q. Did you note that the date of this letter was May 14th, 1956?

A. I think the date of that letter, unless I can't read, I think it was in January.

Q. May 14th, 1956.

A. Oh, the first one. I am sorry. May 14th, 1956. Yes. That was the one thanking us for sending the documents.

Q. Now, the Attorney General wrote to you requesting a copy of the Articles of Incorporation and By-Laws for his information and file and to thank you for sending that information to him on May 14th. Is that correct?

A. Yes.

Q. Did you have any communication from the State or the Attorney General at that time that these proceedings which began on June 1st were contemplated and about to commence?

A. We did not.

Q. Were you told by the Attorney General that you were illegally doing business in the State and that therefore, the organization should register and qualify?

A. No. We weren't told that by Alabama.

[fol. 677] Q. Now, the evidence shows that the respondent in its Answer to this case admitted giving support, financial and moral support, to Rev. Martin Luther King and the Montgomery Improvement Association in its effort to secure for the people of the City of Montgomery the right to ride the buses in this City without segregation. Now, what form of support did they—did your organization give any other form of support to Martin Luther King?

A. In a form other than moral and financial?

Q. Yes.

A. No. I don't know what you mean. We didn't send anybody in here to help the people in Montgomery and they carried on their own demonstrations. We made a financial contribution sometime during the early part of 1956 during the spring. We made a financial contribution from our office and I think it was in the first week of the demonstration when money was very sorely needed. We wired and communicated with Mr. King and I think we asked our Regional Secretary to personally communicate with Mr. King and with the people of Montgomery and to assure them of our support but beyond that we didn't.

Q. As a matter of fact, the segregation on the buses—the laws of the State dealing with segregation of the buses were struck down in a Federal action, were they not?

A. They were.

Q. Now, what kinds of activity has the NAACP engaged in in Alabama since June 1st, 1956?

A. Since when?

Q. Since June 1st, 1956.

A. We haven't engaged in any. We closed our office and did all of the things that you do when you close up shop. We haven't been active here since then.

Q. When you say you closed your office, you mean the office of the New York corporation that is maintained in Birmingham?

A. Yes, in Birmingham.

Q. And all of the chapters that had been active were disbanded. Is that correct?

[fol. 678] A. We ceased operations completely under the Order issued by this Court.

Q. Now, there was some testimony about a meeting in Atlanta in November of 1957 and the testimony showed that several people from Alabama attended this meeting. Are you familiar with this meeting, Mr. Wilkins?

A. Oh, yes. I was there.

Q. Will you explain what the meeting was about and who called it and in general what the meeting was.

A. Well, the Congress, in September, had just enacted the 1957 Civil Rights Law which had some provision for protecting the right to register and vote, and a Commission

had been set up by the Congress and was empowered to assist and collect information for the Federal Government for this purpose. We called a meeting—I think the Congressional action was completed early in September and we called a meeting in Atlanta in mid-November of our Southern State leaders and some cooperating organizations interested in registration and voting. We called it for the purpose of discussing how to start renewed activity under the new Civil Rights Law—the Federal Civil Rights Law that had been enacted by the Congress. We held a two-day meeting and most of the officials were State officials of the NAACP in the Southern States. We had no State officials in Alabama, of course, and none were present from our organization in Alabama. There were, however, some cooperating organizations present. I think there was a representative of labor there as they are interested in registration and voting and I think there was a representative from the Texas Voters League present and there was a representative from an Alabama organization with a very long name almost as long as ours, the Alabama Coordinating Committee for Registration and Voting. They had a delegate there also. This meeting was solely for the purpose of pooling our efforts and inviting all organizations throughout the South to cooperate under the new Federal law to enlarge the registration of Negroes voting. We explained, however, at that meeting that the NAACP could not operate in the State of Alabama and other organizations if they wanted to do so would have to take over that territory because we could not.

[fol. 679] Q. Now, I want to show you a photograh identified as Complainant's Exhibit No. 12 and this was a picture purportedly taken at that Conference and I would like you to identify that person if you can.

A. Oh, that's A. T. Walden.

Q. Who is Mr. Walden?

A. He is a lawyer in Atlanta and a former Democratic County Committee Man and I believe he is a friend—a political friend, at least, of Senator Talmadge.

Q. This is not T. C. Lightfoot then.

A. Who?

Q. T. C. Lightfoot.

A. Oh; that A. T. Walden. He was attending our meeting there in Atlanta.

Q. Now, I want to show you Complainant's Exhibit No. 24 and I will ask you to read that and then explain to the Court if you can just what that is.

A. This is an appeal sent out by the Links.

Q. Who are the Links?

A. The Links are—the official title is, I believe, the Links, Incorporated. The National Links, Incorporated. It is a social club of some seventy-five or eighty chapters scattered over the country and the Links in a meeting in 1960, in June of 1960, proposed this effort to help the NAACP. I think it was, if my memory serves me correctly, a proposal of the Eastern Seaboard Chapters of the Links which was adopted in their Regional Convention and proposed to their National Convention and was adopted by them as a National project. They have a project each year for some organization or some activity in which all of their chapters join. In 1960 they sent out this appeal. It is a sort of a—Your Honor, it is a chain letter idea in which, for instance, I would send to my friends these appeals asking them to send in turn to their friends and for their friends to write in turn to their friends so that the Links hoped to cover the country with this chain letter type of appeal. Of course, it is addressed to us because we are the object of their solicitation in their National project for 1960, but it was a [fol. 689] project of the Links.

Q. Am I correct in stating that the Links is a social club of women?

A. A social club composed of women. That's right.

Q. This exhibit identified as Complainant's Exhibit No. 24 which has the name of Dr. Taggart and Essie making an appeal for funds for the Freedom Fund of the NAACP was sent at the direction of that organization and not at the direction of the respondent corporation, the NAACP.

A. Well, I hear—I don't know, that Mrs. Taggart is a member of the Links. I don't know. It is under this plan that I talked about of their sending these things to their friends and it is conceivable that she sent out, not only this, but a number of others to their friends wherever they might be and asked them to contribute to this project.

Q. This is a Christmas project.

A. Precisely.

Q. As a matter of fact, the NAACP has its own Christmas project, does it not?

A. Usually we do, yes. Since 1923 we have been selling Christmas seals each year as a benefit for our own organization. We run this directly from our own office under our own auspices at our own expense to our own mailing lists and to our own chapters. We do not and have not since 1956, or course, sent these into the State of Alabama. In other words, where we run the project at Christmas time, it is our Christmas seal campaign.

Q. Is the respondent organization connected in any way with the Alabama Coordinating Committee for Registration and Voting?

A. No. No way whatsoever. Not organically, structurally, financially or otherwise.

Q. Is it connected in any way with the Montgomery Improvement Association?

A. No.

Q. With the Tuskegee Civic Association?

A. No. We like to run our own affairs.

Q. Are you a member of any of those organizations?

A. I am not.

[fol. 681] Q. Mr. Wilkins, has the NAACP conducted any business of any kind within the State of Alabama since June 1st, 1956?

A. We have not.

Q. Has it organized any chapters since June 1st, 1956?

A. We have not.

Q. Have you maintained any offices in the State of Alabama since June 1st, 1956?

A. No, sir.

Q. Has it solicited any membership since June 1st, 1956 either on the National or local levels in Alabama?

A. We have not.

Q. Has it solicited any contributions for its National office or local chapters since June 1st, 1956 in Alabama?

A. There have been no appeals from our office to Alabama whatsoever.

Q. Has it collected any membership dues or contributions since June 1st, 1956?

A. I think—I am trying now to recall the Interrogatories of the State on that point. We get some unsolicited contributions and memberships in a few of the years since 1956. Some of them were contracted payments on Life Memberships that had begun prior to 1956 and the people were finishing but the contributions and memberships were wholly voluntary. I think, this year, 1961, I think we had twenty-nine individual members who sent in their membership at large on a voluntary basis.

Q. And these are people in Alabama who would want to make contributions to the NAACP and they would mail their money into New York.

A. We got it directly in New York. Yes, sir. There were no agents or solicitors or local agents acting for it at all. This was not in response to any appeal sent out by New York.

Q. All right, sir. That's all.

Cross examination.

By Asst. Attorney General Madison:

Q. What is your home telephone number in New York? [fol. 682] A. That number is 7-9487.

Q. What is the telephone number of the main office of the NAACP?

A. Bryant 9-1400.

Q. Is that the same number it has been for a number of years?

A. The Bryant number has been changed, I think, within the last nine years. I mean, the Bryant number is a new number. I think it is about four or five years old. It may be three years old.

Q. Is that number that you just gave your home office?

A. That's our home office. Yes, sir.

Q. And that is what now at the present time?

A. Bryant 9-1400. I hope I don't get any collect calls from this.

Q. How long have you known W. C. Patton?

A. Since the early fifties. I think he was President of our State organization in 1952 or 1953 or 1954 or something like that. I have known him since then.

Q. Do you know W. P. Mitchell of Tuskegee, Alabama?

A. I know him, yes.

Q. Do you know D. D. Glover of Anniston, Alabama?

A. I may know him. It has been five and a half years—these people were officers of our chapters prior to 1956. I could have known them or met them or had correspondence with them but I just can't fit them together now in my mind.

Q. How about Mrs. Laura of—Mrs. Laura McCray of Tuskegee, Alabama?

A. Yes, I think I know Mrs. McCray.

Q. How about Dorothy Jean Palmer of Birmingham, Alabama?

A. I don't know about her.

Q. How about C. W. Lee of Montgomery, Alabama?

A. Perhaps.

Q. Orzelle Billingsley, Jr. of Birmingham, Alabama?

A. I don't know. I am not sure. I could do better if I had some associations with these people.

Q. I believe he is an attorney in Birmingham, Alabama. Does that refresh your recollection?

A. Mr. Lee? I am trying to think of some NAACP con-[fol. 683] nection and if I could get some better identification I could give you a better answer.

Attorney Carter: Here he is right here. That Orzelle.

The Witness: Yes, sure. I am trying to think of people who have NAACP connections and get some identification that way.

By Asst. Attorney General Madison (Continuing):

Q. Well, he has some NAACP connections, doesn't he?

A. Well, perhaps. In former days he was a member, I hope.

Q. Now, these people I asked you about are all given as members of the Board of Directors of the Alabama State Coordinating Association for Registration and Voting, aren't they?

A. They could very well be.

Q. They could very well be former members of the NAACP too, couldn't they?

A. They could be former Elks also.

Q. Well, didn't you testify that some of them were former members of the NAACP?

A. No, sir. I asked you if you would enlighten me as to their connections. I said, if they were, I could more easily identify them.

Q. Do you know whether or not any of these men whose names I now show you were former members of the NAACP? I will just show them to you. Now, Mr. Patton is a former and a present member.

A. Mr. Patton, yes. I don't know about Mr. Glover or Mr. Mitchell nor Mrs. McCray nor Mr. Lee nor Mr. Billingsley nor Mrs. Dorothy Jean Palmer. We have three hundred thousand members and I couldn't possibly know every one of them or recognize their names.

Q. Of course, you couldn't possibly remember three hundred thousand names. I will concede that would be a stupendous feat but where was the Links which you do remember—where was it organized?

A. The Links?

Q. The Links.

A. The Links Club? The social club?

Q. That's right.

A. Where was it organized?

[fol. 684] Q. That is right.

A. Well, I am sure I don't know. These are a group of women who organized a social club. I don't know whether it was organized in Philadelphia or Los Angeles or Chicago or where.

Q. All right. Now, you have testified to a good deal of the activities of that association or that group or whatever it is.

A. I testified to an activity that I know about in the year 1960. That's all I testified to.

Q. Now, how was the knowledge of those activities acquired by you?

A. They wrote us a letter and said we have had a meeting of our Regional Association, the Eastern Regional Association, and adopted a plan which we would like to propose to our National Convention, a plan to make the NAACP our National project for 1960 and we wrote and thanked them for doing this and they took it to their National Convention

and the convention adopted—or at least they advised us in a letter that they had adopted it—

Q. Do they have a National Convention?

A. Yes. They have a National Convention.

Q. Where do they have that?

A. I don't know. Each year it is at a different place.

Q. Well, did they write you about the National Convention, what action was taken?

A. They wrote us in 1960 about the project they had for us. They don't write us about their National Conventions and about projects that don't affect us.

Q. Without asking for any names whatsoever, do you know whether or not there are a substantial number of NAACP members who belong to this organization?

A. Well, I have no—

Attorney Carter: We object. I object to that, Your Honor. That is not at all material to the issues in this particular case. Membership in the NAACP is forbidden only in the State of Alabama and the Links is not an Alabama corporation.

The Court: Well, the question was not any names but [fol. 685] whether or not there was a substantial number or something like that?

Asst. Attorney General Madison: Yes, sir.

The Court: I think that is admissible and I will give you an exception.

Attorney Carter: Well, we'll take it.

The Witness: I have no way of knowing, Mr. Madison. You see, there are twenty million colored people in the United States and—

Asst. Attorney General Madison: Nobody asked you anything about that—

Attorney General: Just answer the questions—

The Witness: And we only have three hundred thousand members—

Asst. Attorney General Madison: Just a minute! Your Honor, I ask that you instruct the witness to answer the questions—

The Court: Just answer his question. There was no question asked about population.

Asst. Attorney General Madison: To your knowledge, has the NAACP qualified to do business in any States other than Alabama?

Attorney Carter: I object.

The Court: Yes. I believe I will sustain the objection to that question.

Asst. Attorney General Madison: We reserve an exception, if the Court please.

By Asst. Attorney General Madison (Continuing):

Q. Now, if I recall your testimony it was that you had chapters or branches in some forty-seven or forty-eight States approximately and you stated that you didn't know exactly how many but that it was around that figure and you stated that there had been none in Alabama since June of 1956. Now, how many branches did you have in Alabama prior to 1956?

A. I'm afraid I can't answer that exactly. We had, if I recall, about ten to twelve thousand members in the State itself. Now, I am not sure how many chapters there were. [fol. 686] I would say, just as a guess that we had about twenty to twenty-five or something like that, but this was 1956 which was five and one-half years ago and we don't have any records here now.

Q. And your first chapter or your first branch according to your recollection was started in 1918. Is that right?

A. Yes, sir.

Q. For the purpose of refreshing your recollection, was that either in Montgomery or in Selma?

A. It was one of the two. I can't say which.

Q. Do you think that the next one was either in Selma or Montgomery depending upon which one was first?

A. Yes. We had chapters in most of the principal cities of Alabama but which one was first, I don't know.

Q. Did you have one in Tuskegee, Alabama?

A. We might have had one at one time in Tuskegee. The Tuskegee Civic Association became the dominant organization in Tuskegee after a bit with its very dynamic campaign for registration and voting. If you will permit me to explain, sometimes we have a chapter in a city this year or for two or three years and then it will die down and become

dormant and then it will be revived later, so I am not sure whether we had one in Tuskegee continuously or not at this particular time you were talking about.

Q. Did the NAACP while it was there and while the Tuskegee Civic Association was operating, did they cooperate together in the objectives you have testified about?

A. I don't know about cooperating together. We both wanted the same things such as registration and voting and I think we worked—it is our policy to work independently wherever it is possible. We like to run our own business.

Q. Did your branch there so far as you know ever get at cross purposes, so to speak, with the Tuskegee Civic group?

A. I don't recall.

Q. Had you intended to come down and testify in this case when it was first set for trial this last time?

[fol. 687] Attorney Carter: I object, Your Honor. That has absolutely nothing to do with the issues in this case as to what Mr. Wilkins intended to do. He is here at the present time and if Mr. Madison wants to ask him questions he may ask him questions about things.

The Court: What was the date of the other hearing?

Asst. Attorney General Madison: Your Honor, I asked him if he intended to come down and testify in this case when this case was first set for hearing.

The Court: I don't see the materiality of that. I will sustain the objection.

Asst. Attorney General Madison: Now, for the information of the witness, this is a record of the United States Court of Appeals—

Attorney Gray: Speak a little louder, please, Mr. Madison.

Asst. Attorney General Madison: This is the Record of the United States Court of Appeals in which the Certificate of Incorporation of the National Association for the Advancement of Colored People appears and this sets forth the principal objectives in the first paragraph.

Attorney Carter: What page is that you are on?

Asst. Attorney General Madison: Give him the page number. You have it in your hand.

A Voice: Page 30.

By Asst. Attorney General Madison (Continuing):

Q. Now, prior to the year 1956, were those objectives pursued through the branches in the State of Alabama?

A. These were the objectives of the Association pursued by all chapters and in Alabama—prior to June 1st, 1956 in Alabama, yes.

Q. Now, you were asked a question about a meeting in Atlanta after 1957 after Civil Rights Legislation had been passed pertaining to voting rights. Did you appoint certain committees at that meeting?

A. We appointed a committee.

Q. A committee?

A. A committee. One.

[fol. 688] Q. Was W. C. Patton of Birmingham, Alabama appointed on that committee?

A. He was. Yes.

Q. Kelly M. Alexander was appointed, was he not?

A. He was the chairman.

Q. He is from Charolette, North Carolina.

A. That's right. Charolette, North Carolina. He is a member of our Board of Directors.

Q. And a man from Richmond, Virginia?

A. That's right.

Q. And Mrs. Bates from North Carolina.

A. That's right.

Q. And C. R. Jordan of Meridian, Mississippi.

A. That's right.

Q. A. P. Walden of Atlanta, Georgia.

A. Right.

Q. W. C. Patton of Birmingham, Alabama.

A. Right.

Q. And Mrs. Ruby Hurley of Atlanta, Georgia.

A. That's right.

Q. Now, in your work from time to time did you have occasion to contact Ruby Hurley in Atlanta from time to time by telephone? Did you have occasion to do that for any reason?

A. Oh, yes. I talked to her by telephone in Atlanta. Not daily, however.

Q. Now, do you recall where you called her there?

Attorney Carter: I object to that, Your Honor. I think that what the State is now attempting to do is to secure from this witness Mrs. Hurley's telephone number. Now, Your Honor, I submit that Mrs. Hurley's telephone number is none of the State's business and I submit that if Mr. Wilkins does know her telephone number that he not be required to answer that question. What her telephone number is is her business, Your Honor, and has absolutely nothing to do with any of the issues in this particular case.

The Court: I think the question has evidential value. I [fol. 689] will let it in and he can answer if he knows.

The Witness: I don't know Mrs. Hurley's telephone number.

By Asst. Attorney General Madison (Continuing):

Q. Well, when you would put in a long distance telephone call for her, what did you ask for?

A. I called for our Atlanta office.

Q. Do you know the number of that Atlanta office?

A. No, I do not.

Q. Do you know the office numbers of any of your branches in any of the forty-seven or forty-eight States that you were talking about?

A. I know the number of our Washington Bureau but I usually have the switchboard get the other numbers for me. I don't know them.

Q. Did the Tuskegee Civic Association at any time pay a membership fee to the NAACP?

A. I am sorry. I do not know. I rather doubt it but I don't have custody of the membership records and I am not familiar with them. I would have to look it up.

Q. Well, do you know whether or not any of the money that was ever gotten up by this organization called the Links—none of that was ever returned to anybody by the NAACP, was it?

A. Do you mean this solicitation we were talking about at Christmas?

Q. That's right. You never did send any of that money back, did you?

A. Oh, no. We didn't send it back.

Q. Do you know outside of W. C. Patton whether there

were any other members of the NAACP from Alabama present at the Atlanta meeting in 1957?

A. There were no—Mr. Patton came as a representative of this Alabama Coordinating Committee and there were no other representatives from Alabama there that I know of.

Q. Now, I believe you testified in effect and correct me if I am wrong, you have told that committee—you told that committee or group that from 1956 on that the NAACP had been barred from activity in Alabama and that this proposed activity would have to be carried on through [fol. 690] some other organization and not by yours.

A. The labor people were present and Rev. Martin Luther King was present and I simply suggested that whatever proportioning out of this campaign there was that we could not participate in any effort in the State of Alabama.

Q. What you had reference to then was improving the voting status of Negroes in the various States including Alabama under the new Civil Rights Legislation which had been enacted in 1957.

A. Under the Civil Rights Legislation—

Q. And when it came to Alabama then that had to be carried out under the activities of some one else other than the NAACP.

A. We could not do it.

Q. W. C. Patton on this committee was appointed for that purpose insofar as Alabama was concerned.

A. No, he was not appointed—I am sorry. He was not appointed to work in Alabama. He was appointed as a member of the committee.

Q. Well, as a representative of this Coordinating—

A. That's right. Of another group other than the NAACP to be represented on the Central Committee.

Q. Was the Rev. Martin Luther King over there at the meeting?

A. Rev. King was at the meeting, yes. He spoke at the meeting.

Q. How about Rev. Shuttlesworth?

A. I don't recall that Rev. Shuttlesworth came. He was not at that meeting.

Q. Was Rev. Abernathy there or do you know?

A. No. Rev. Abernathy was not there.

Q. Do you know Dr. G. A. Rogers of Anniston, Alabama?

A. I think I know Dr. Rogers, yes. He was not there.

Q. Now, can you recall, after thinking it over for a minute or two, whether any other people from the State of Alabama were present?

A. No one was there from Alabama except—

Q. The ones you named?

A. W. C. Patton. Rev. King came and spoke to the meeting because he too is interested in registration and voting.

[fol. 691] Q. All right. That's all. No further questions.

Redirect examination.

By Attorney Robert L. Carter:

Q. I have just two more questions, Mr. Wilkins. Mr. Madison asked you a question that I had planned to ask you myself.

A. I didn't hear you.

Q. Mr. Madison asked you a question that I had planned to ask you myself and I forgot about it. Now, this committee—we are now talking about the 1957 committee appointed at the 1957 meeting—this committee on which Mr. Patton and several other people were members—what was this committee supposed to do? What was it appointed for? What was its purpose?

A. It was appointed for the purpose of devising and carrying out a voting and registration campaign. I think the language was, in cooperation with all groups in the South—the fourteen Southern States.

Q. This was the central committee whose purpose was to seek to get this campaign under way throughout the South. Is that right?

A. That's right.

Q. All right. One further question. There has been testimony here in the Record that in addition to Rev. King and Mr. Patton, both of whom were residents of Alabama at the time, that Mr. W. P. Mitchell of Tuskegee was pres-

ent at the meeting in Atlanta. Do you recall whether he was present?

A. I don't recall his being present. This meeting in Atlanta was called by us and it got considerable publicity and Atlanta is a cross-roads and a lot of people travel back and forth through there and it is quite possible that Mr. Mitchell might have dropped in as we didn't exclude anybody, but he was not a delegate to the meeting and he was not a representative of Alabama that I recall.

Q. All right. That's all.

[fol. 692] Recross examination.

By Asst. Attorney General Madison:

Q. Now, you testified about the 1957 Civil Rights Act. Do you recall the passage of the 1960 Civil Rights Act insofar as it relates to the voting?

A. Yes, I recall a little of it.

Q. You are aware that any number of actions have been brought under that Act in the State of Alabama, are you not?

A. Actions? By whom?

Q. By the United States on behalf of Negro citizens of this State.

A. I believe there have been some brought by the Department of Justice.

Q. Now, has the NAACP had anything to do with jogging up the Justice Department in bringing those suits down here?

A. I think our influence with the Justice Department has probably been exaggerated. I don't think we have anything to do with it. I don't think anybody has to jog Robert Kennedy. He is a sort of a self-starter.

Q. Well, what about Burt Marshall?

A. He is of the same caliber.

Q. What about John Doar?

A. Well, I think the Justice Department certainly didn't consult us about what they were going to do in the State of Alabama and they didn't ask us for any advice as to how to proceed. No. We didn't help them at all. We couldn't help them. They know too much—

Q. Well, you are well aware that they are keeping us pretty busy, aren't you?

A. I would hope, Mr. Madison, that they would keep you busier.

Q. All right. No further questions.

[fol. 693] STEWART CULPEPPER, having been duly sworn, was recalled as a witness for the Respondent and testified as follows:

Direct examination.

By Attorney Robert L. Carter:

Q. Mr. Culpepper, you testified previously for the State, did you not?

A. Yes.

Q. You testified about taking some pictures and being present at a conference in Atlanta in 1957.

A. That is correct.

Q. And you were shown some photographs that you had taken?

A. That's right.

Q. Now, I want to show you Complainant's Exhibit No. 12 and ask you to identify that person, if you can.

A. To the best of my knowledge, that's A. T. Walden.

Q. Do you know who A. T. Walden is?

A. He is an Atlanta attorney.

Q. He is not an Alabama resident, is he?

A. No. I don't know. I assume he isn't.

Q. But you know him as being from Atlanta, Georgia.

A. As far as I know, yes.

Q. That's all.

MACDONALD GALLION, having been duly sworn, was called as a witness for the Respondent and testified as follows:

Direct examination.

By Attorney Fred D. Gray:

Q. State your name for the Record, please, sir.

A. MacDonald Gallion.

[fol. 694] Q. What position do you hold with the State of Alabama?

A. Attorney General of the State of Alabama.

Q. How long have you held that position?

A. Since January, 1959.

Q. Prior to that time, did you hold any position with the State of Alabama?

A. Well, up until November of 1958 I was Chief Assistant Attorney General.

Q. Was that under the administration of Mr. Patterson who is now Governor?

A. That is correct.

Q. Were you his chief Assistant at the time this action was filed?

A. That is correct.

Q. Have you served as Assistant Attorney General during any of the other Attorney General's administrations in the State of Alabama?

A. Yes, I served under Mr. McQueen when he was Attorney General and under Mr. Carmichael.

Q. Did you, under either of those administrations, serve as Chief Assistant Attorney General?

A. No, I did not.

Q. Now, I believe you were served with a subpoena and that subpoena asked you to bring certain records with you. Do you have that subpoena?

A. I have it here in my hand.

Q. Will you indicate, sir, which records you were supposed to bring?

A. It says, "Any and all records, communications, and so forth in the office of the Attorney General of Alabama

which will disclose any action taken under Article XII, Section 232, Constitution of Alabama, 1901 and, or Sections 192, 193 and 194 of Title X, Code of Alabama, 1940 against any foreign corporation from 1918 to date."

Q. Did you bring those records with you?

A. I have what I was able to get. Obviously, from 1918 to date is a monumental task and almost impossible of accomplishment.

Q. May I see what you have brought, please?

A. Well, I have notes on it and the availability of such records you desire when and if you were to want them. I [fol. 695] might say this, that since 1939 practically all the records, for space purposes, have been transferred over to Archives and History. Since that date, I have no records directly relating to the Code Sections indicated nor to the Constitutional Sections indicated.

Q. May I see the records you brought, please? Will you tell us, please, whether or not any action has been brought by the Attorney General's office against a foreign non-profit corporation which had failed to qualify to do business in the State of Alabama prior to this action?

Asst. Attorney General Madison: We wish to object to that, Your Honor.

The Court: What are your grounds?

Asst. Attorney General Madison: He is asking about other corporations other than the corporation that is under consideration here and I don't see why it is material insofar as the action against this particular corporation is concerned. What action the State took or failed to take against some other corporation unless it can be shown that all of these corporations he is asking about are engaged in the same identical activities within the State of Alabama.

The Court: How is this question raised by the pleading and the Bill and the Answers?

Attorney Gray: Your Honor, we have alleged in our Answer—

The Court: Let me see the Answer for a minute.

Asst. Attorney General Madison: I will state this, Your Honor. I have a legal objection to make but I have no practical objection to it.

Attorney Gray: I think, Your Honor, that in our pre-trial conference that the Attorney General admitted that no similar action had been taken.

The Court: What's the use of asking the question again then? However, I would like to see the Answer and then I can tell from that.

Attorney Gray: The specific paragraph does not allege it in toto but we have alleged, in effect, that the purpose of [fol. 696] this action is to ouster the respondent from doing business because it was engaged in Civil Rights activities and we wish to show that no similar action has been brought by the Attorney General.

The Court: By similar action you mean relating to Civil Rights?

Attorney Gray: I mean, no other non-profit organization or corporation which has been doing business in Alabama has been enjoined not only from doing business in the State but also enjoined from qualifying to do business in the State.

The Court: Well, just thinking out loud, suppose one of them said this, that we have the American Educational Association or something like that and how would that help us on this? That's what I am trying to find out.

Attorney Gray: I think it will tend to show that the inaction on the part of the State over these years and I call the Court's attention to the fact that our corporation has been in the State of Alabama since 1918 and its activities have been known and it really shows one or two things. Either the State has, prior to this time, considered this corporation as exempt from having to qualify or that it did not and it simply, in effect, has not consistently enforced this statute for all of the corporations that have been doing business in this State.

The Court: Well, assuming that is shown. Then, where are we?

Attorney Gray: Well, then, I think, Your Honor, it certainly shows that the State is, in effect, persecuting this particular organization because of its activities with reference to Civil Rights and has failed to do so in all of the other areas and we think it denies them equal protection under the law.

The Court: I think this evidence would have to be restricted to non-profit organizations who have the same line of activity and have the same objectives and use the same methods. You may have an exception to the Court's ruling. Now, I believe there is a State Law that after certain papers [fol. 697] in the custody of public officials get pretty old you turn them over to the Public Archives and History?

The Witness: It is permissible, Your Honor, to do so. It is permissible to do so when space becomes vital.

Attorney Gray: Your Honor, we would then like to make a proffer for the Record. We believe, if we had been permitted to examine this witness, that he would have testified to the effect that since he has been serving as the Attorney General of the State of Alabama and that during the time he was the Chief Assistant Attorney General of the State of Alabama under previous administrations that he would testify that to his knowledge that he would testify that no similar action has been brought by the Assistant Attorney General or by the Attorney General of the State of Alabama against any similar organization for the purpose of ousting them from the State.

Asst. Attorney General Madison: Your Honor, I was about to withdraw the objection but I will have to try this case as I think a lawyer should try it but I don't think the evidence is admissible and—

The Court: Well, I have ruled that it must be the same objectives, the same methods and the same purposes. A Medical Association might go one way and other association might go another. Let me stand on my ruling.

Attorney Gray: Thank you, sir. No further questions. We except, if the Court please.

Asst. Attorney General Madison: No questions.

WILLIAM F. THETFORD, having been duly sworn, was called as a witness for the Respondent and testified as follows:

Direct examination.

By Attorney Fred D. Gray:

Q. State your name for the Record, sir.
[fol. 698] A. William F. Thetford.
Q. Mr. Thetford, will you state for the Record what position you occupy with Montgomery County, Alabama?
A. I am Circuit Solicitor of the Fifteenth Judicial Circuit.
Q. How long have you occupied that position?
A. For eleven years.
Q. As Circuit Solicitor for the Fifteenth Judicial Circuit, is it your duty to enforce the various statutes of the State of Alabama?
A. Yes.
Q. Will you tell us whether or not since—I believe you received a subpoena asking you to bring with you certain records?
A. That's right.
Q. Have you brought those records?
A. No.
Q. Will you tell the Court why you did not bring them?
A. I did not have any such records.
Q. Do you have a copy of that subpoena with you, Mr. Thetford?
A. No, I do not.
Q. Mr. Thetford, I would like you to read Item No. 5 here and tell us whether or not that is substantially what you were asked to bring in relation to records?
A. It probably is. I am not sure. I would have to compare it with the original subpoena to know for sure.
Q. Will you look at that, sir? Is that a copy of the subpoena that you were served with?
A. Yes, I think it is.
Q. Will you read aloud what records you were supposed to have brought?

A. I was asked to bring any and all records, communications, in the office of the Solicitor of the Fifteenth Judicial Circuit of Alabama which will disclose any taken taken under Article XII, Section 232 of the Constitution of Alabama, 1901 or Section 192, 193 and 194 of Title X of the Code of Alabama against any foreign corporation from 1918 to date.

Q. Since you have been in office, sir, have you brought [fol. 699] such an action against a foreign corporation?

A. I have not.

The Court: Let me ask this question. Is your office charged by law with seeking and hunting out organizations or foreign corporations that are not qualified and then to bring proceedings against them? Has that ever been a function of your office?

The Witness: No, sir.

The Court: Has anybody ever asked you to get after one of these—

The Witness: No, sir. I have not received such a request.

By Attorney Fred D. Gray (Continuing):

Q. Will you tell us whether or not, sir, you have had an occasion to commence a prosecution under Title X, Section 194 of the Code of Alabama?

A. No.

Q. You have not?

A. No. Now, this is a very interesting set of Sections here. One of the provisions is that the Solicitor retains twenty-five per cent of any penalty that is collected.

Q. Then, does not this Section charge the Solicitor with the responsibility of enforcing this particular provision?

A. I am charged with enforcing all criminal laws and with that law if any violation of it is called to my attention.

Q. Did you know, Mr. Thetford, prior to June 1st, 1956—do you know whether or not the National Association for the Advancement of Colored People was doing business in the State of Alabama?

A. I knew they were. Yes.

Q. Do you have an idea about how long you had known it?

A. No. For a number of years, certainly.

Q. And you initiated no such proceedings against it nor any other corporation in these sections.

A. No. I might add this though. I did not know it was a foreign corporation that was not qualified to do business in the State.

[fol. 700] Q. All right. That's all.

Asst. Attorney General Madison: No questions.

[fol. 747]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

In Equity

Case No. 30468

STATE OF ALABAMA, On the Relation of JOHN PATTERSON, Attorney General of the State of Alabama, Complainant,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, Respondent

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REPORTER'S CERTIFICATE

I, Walter E. Graham, Official Court Reporter of the 15th Judicial Circuit of Alabama, hereby certify that the aforegoing pages of transcript and evidence, Volumes..... ....., numbered from Page ..... to ....., inclusive, are a true and correct transcript of ALL the testimony and evidence in the above captioned cause taken by me at the Court House, Montgomery, Alabama and that I transcribed same from my original shorthand notes and recordings made and taken at the time of hearing same and caused same to be reduced to typewriting and that said reduction to typewriting is true and correct, all to the best of my skill, ability, knowledge and belief.

I further certify that all exhibits offered and received in evidence have been incorporated in this Record in Volumes ....., Page ..... to ....., inclusive.

I further certify that all Attorneys of Record have been notified of the filing of this transcript of testimony and evidence in the Office of the Register of the Circuit Court at the Court House, Montgomery, Alabama.

This the 9th day of March, 1962.

Walter E. Graham, Official Court Reporter, Montgomery, Alabama.

Filing Date of Transcript Record: .....

.....
Register

[fol. 1039]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ORDER OF SUBMISSION—December 29, 1961

This cause coming on to be heard, is submitted for decree upon pleadings and proof as shown by the note of submission.

Dec. 29, 1961.

Walter B. Jones, Circuit Judge.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

NOTE OF SUBMISSION—Filed December 29, 1961

Complainant, being called, offers the following, to-wit:

1st. Bill of Complaint, as amended with attached Exhibits.

2nd. Pre-trial proceedings.

Respondent, being called, offers the following, to-wit:

1st. Motion to Dissolve Temporary Injunction.

2nd. Demurrers to Original Bill of Complaint.

3rd. Answer to Complaint.

4th. Amended Answer (Jurat to Answer)

5th. Affidavit of Roy Wilkins attached to Motion to set aside Order adjudging Respondent in Contempt.

6th. Motion for disqualification of Judge and for Judge to Recuse himself, and testimony of witnesses, namely Grover Hall, Fred Gray, Solomon Seay and the Hon. Walter B. Jones, and the proof and Respondent's exhibits 1—inclusive.

7th. Amendment to Motion for disqualification of Judge.

8th. Renewal of Motion to Dissolve Temporary injunction.

9th. Motion to set down cause dated and filed 8/1958

10th. Motion to set down cause dated March 4, 1960

11th. Motion for hearing on Merits filed April 28, 1960

12th. Order denying Motion May 25, 1960

13th. Answer to Interrogatories by Roy Wilkins

14th. Transcript of Pretrial Conference held Dec. 13, 1961.

15th. Motion to strike Complainant as amended.

16th. Answer to Amended Complaint

17th. Oral Motion to dese*grate* the Court Room made Dec. 27, 1961.

18th. Oral Motion to Order the Court Reporter to give courtesy titles to Negro witnesses and Attorney the same as to white.

19th. Oral Motion to Dismiss Complaint at the end Complainants case.

20th. Transcript of Record of Evidence taken before the Court on July 25, 1956.

[fol. 1040] 21st. Testimony of witnesses for Respondent hereto attached and exhibits one thru eleven inclusive.

I hereby certify that the above Note of Submission is correct, this 29 day of December, 1961.

Geo. H. Jones, Jr., Register.

MacDonald Gallion, Solicitor for Complainant.

Fred D. Gray, Arthur D. Shores, Robert L. Carter, Peter A. Hall, Orzell Billingsley, Jr., Solicitors for Respondent.

[fol. 1041]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

FINAL DECREE—December 29, 1961

This matter now comes on to be heard for final decree before the Court and is submitted by the respective parties upon the pleadings and proof as noted by the Register, and upon the note of submission filed this day.

The Court has heard this case in open Court for three days, Wednesday, December 27th, Thursday, December 28th and Friday, December 29th. During this time twenty witnesses for the respective parties have been examined orally before the Court. The examination and cross-examination of these witnesses has been careful and thorough.

Upon completion of the testimony, the Court did not fix any time limit for the argument and the case has this day been argued before the Court by counsel for the respective sides for several hours.

Now, upon consideration of only such testimony as is relevant, material, competent and legal to the issues presented by the pleadings in this case, the Court is of opinion that the allegations of complainant's bill, as last amended, have been proved by the over-whelming weight of the testimony; and the Court finds from this evidence, much of it admissions by the respondent itself, that the respondent has been and continues to do business in the State of Alabama

in violation of the Constitution and laws of the state relating to foreign corporations and the Court is of the opinion, without going into detail at this time, that the allegations of the complainant's bill, as last amended, have been overwhelmingly proved by all of the credible testimony in the case.

The Court further finds from the evidence that said respondent's activities in this state have also been in violation of other laws of the State of Alabama and are and have been a usurpation and abuse of its corporate functions and detrimental to the State of Alabama; and now, upon consideration of the record in this case, including all of the pleadings and all of the testimony taken orally before the Court, it is, therefore,

Ordered, Adjudged and Decreed by the Court that the respondent, National Association for the Advancement of Colored People, a corporation, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, National Association for the Advancement of Colored People, a corporation, be, and they hereby are, permanently restrained and enjoined from:

1. Conducting any further business of any description or kind of respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any office of respondent within [fol. 1042] the State of Alabama.

2. Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries within the State of Alabama.

3. Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

4. Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

5. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application,

paper or document for the purpose of qualifying to do business within the State of Alabama.

It is, further Ordered, Adjudged and Decreed by the Court that the respondent, National Association for the Advancement of Colored People, a corporation, its agents, servants, employees, attorneys, and all officers thereof, and all persons in active concert or participation with the respondent, be and they hereby are permanently restrained and enjoined as to intra-state activities and business of this kind only, and it is hereby ousted from organizing or controlling branches of respondent in this state and from exercising any of its corporate functions in the State of Alabama, except such as may be protected by the Interstate Commerce Clause of the Constitution of the United States.

The Court, in view of the above ruling, is of opinion that it is not necessary that the temporary injunction issued June 1, 1956 be continued in force and effect, and the same is hereby dissolved as of this date.

The Court notes that the United States Court of Appeals for the Fifth Circuit did on December 11th, 1961, in compliance with the mandate of the United States Supreme Court, remand the proceedings in the case of the National Association for the Advancement of Colored People, appellant, versus MacDonald Gallion, Attorney General of the State of Alabama, et al., appellee, to the United States District Court with directions to proceed with the trial of the issues in the action unless within a reasonable time, not later than January 2nd, 1962, the State of Alabama shall have accorded to the National Association for the Advancement of Colored People, a corporation, an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956 and upon the merits of the action in which such order was issued. Without this directive of the Supreme Court of the United States, a ruling which lacks that comity usually existing between state and federal courts, this Court would now go into a full dis-
[fol. 1043] cussion of all the issues involved in this case. This directive of the United States Supreme Court prevents this State Court at this time from writing a full

opinion in the case; and this Court does now reserve the right at a future date to state in an opinion its full and complete findings of fact and its rulings on the law in this case, with appropriate citations of authorities. It is,

Ordered, Adjudged and Decreed further by the Court that the costs in this cause, to be taxed by the Register of this Court, be paid by the respondent, for which let execution issue.

Done, this the 29th day of December, 1961.

Walter B. Jones, Circuit Judge.

[fol. 1044]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION FOR REHEARING—Filed January 8, 1962

To the Honorable Judges of Said Court:

Now comes your petitioner, The National Association for the Advancement of Colored People, respondent in the above styled cause, and applies for a rehearing of the decree and order rendered in the above styled cause, on the 29th day of December, 1961, and as grounds for such application your petitioner respectfully shows unto your Honor the following:

1. That the denial of respondent's Motion to Dissolve the Temporary Restraining Order and Injunction constitutes error and denies to petitioner substantive due process of law as secured under the Fourteenth Amendment to the Constitution of the United States.

2. That the Judgment and Decree, in this cause, are contrary to the weight of the evidence.

3. That the Judgment and Decree are contrary to Law.

4. That the Judgment and Decree are contrary to the evidence and the Law.

5. That the Judgment and Decree are not supported by the evidence, and unless set aside and a new hearing granted, the respondent is denied due process under the

Constitution of Alabama, and the Fourteenth Amendment to the Constitution of the United States.

6. That the denial of the motion of respondent to order the bailiff to cease to require spectators in the courtroom, at the hearing of the above entitled cause on the merits, to take seats according to racial identification rendered the forum in which the hearing took place one wherein it was impossible for petitioner to be tried in an impartial and objective forum which is necessitated by the basic standards of the procedural and substantive due process of law secured under the Fourteenth Amendment to the Constitution of the United States.

7. That the failure of the Court to grant respondent's Motion to desegregate the Courtroom was a denial of due process and equal protection of the law.

8. That the denial of respondent's motion to require court reporters to use common courtesy titles in respect to Negro lawyers and witnesses constituted a denial to petitioner of procedural due process secured under the Fourteenth Amendment to the Constitution of the United States.

9. That the failure of the Court to grant respondent's Motion to have all parties, called as witnesses, addressed in the same manner, without regard to race or color, was a denial of due process and equal protection of the law.

[fol. 1045] 10. That failure of the Trial Judge, to recuse himself from hearing this cause was a denial of due process and equal protection of the law, under the Fourteenth Amendment to the Constitution of the United States.

11. That the denial of the motion for the judge to disqualify and recuse himself was error and denies to petitioner procedural and substantive due process as secured under the Fourteenth Amendment to the Constitution of the United States.

12. That the Court erred in failing to sustain respondent's Motion to Dismiss Complainant's Bill of Complaint, after Complainant had rested its case.

13. That the admission into evidence of the places called, the names of the parties called with their telephone numbers of all long distance telephone communications to and from the Birmingham telephone number listed in the name of W. C. Patton, an employee of petitioner's, without an adequate foundation for such information being introduced into evidence constituted error, a gross abuse of judicial discretion, an invasion of the privacy and a denial of First Amendment rights of petitioner and any parties associated with it in the trial of this case—all in violation of the Fourteenth Amendment to the Constitution of the United States.

14. That the Judgment and Decree of the Court finding that the respondent had been and was still doing business in Alabama, was error and was not sustained by the evidence.

15. That the judgment herein is without adequate foundation in law or in fact and constitutes a denial of Fourteenth Amendment due process.

16. That the judgment herein is contrary to the overwhelming weight of the evidence and as such constitutes a denial of petitioner's rights secured under the Fourteenth Amendment to the Constitution of the United States.

17. That the judgment entered herein, whereby petitioner is permanently ousted from the state, is so severe and harsh, in the light of the evidence adduced at the trial, as to in and of itself constitutes a denial of due process secured under the Fourteenth Amendment to the Constitution of the United States.

18. That the ruling of the court in refusing to permit respondent to thoroughly pursue and introduce into evidence testimony showing that the above entitled proceedings had not been instituted against any other non-profit foreign corporation to the knowledge of the Attorney General, the Registrar of the Court, the Solicitor of the court or the Clerk of the court constitutes error and a denial of due process and equal protection of the law.

19. That the judgment herein entered against respon-
[fol. 1046] dent constitutes a denial of equal protection of the laws in that this judgment was entered against respondent solely because respondent is the National Association for the Advancement of Colored People and for no other reason.

20. That the judgment herein entered constitutes a denial to petitioner and its members of the right to freedom of speech and freedom of association secured under the Fourteenth Amendment to the Constitution of the United States.

21. That the Order and Judgment and Decree of the Court permanently restraining and enjoining the Respondent from:

(a) Conducting any further business of any description or kind of respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any office of respondent within the State of Alabama;

(b) Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries within the State of Alabama;

(c) Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama;

(d) Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama;

(e) Filing with the Department of Revenue and the Secretary of State of the State of Alabama, any application, paper or document for the purpose of qualifying to do business within the State of Alabama;

are in violation of respondent's rights as protected by the First and Fourteenth Amendment to the United States Constitution.

22. That the Court's decree enjoining the respondent from filing with the Department of Revenue and the Secre-

tary of the State of Alabama, any application, paper, or document for the purpose of qualifying to do business in the State of Alabama, denies respondent rights, privileges and immunities secured by the First and Fourteenth Amendment to the Constitution of the United States.

23. That the judgment of the Court is contrary to the great preponderance of the evidence in the case.

24. The record is so devoid of evidentiary support of the allegations in the Complaint, the Complainant having failed to present any evidence upon which it could rationally be found that the respondent should be permanently ousted from doing business in this State, that the decree of ouster upon the facts proved deprived the respondent of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States.

25. It affirmatively appears from the evidence in this case that this Complaint was instituted against respondent as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services provided by the State of Alabama, and municipalities within said State and as such, said decree thereby deprived respondent and its members of rights, privileges, and immunities secured by the First and Fourteenth Amendment to the Constitution of the United States.

[fol. 1047]

Respectfully submitted,

Fred D. Gray, Arthur D. Shores, Robert L. Carter, Orzell Billingsley, Jr., Peter A. Hall. By: Fred D. Gray, Attorneys for Respondent.

Certificate of service (omitted in printing).

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ORDER DENYING REHEARING—January 12, 1962

This cause now coming on to again be heard, is submitted for decision upon the application for rehearing filed on the 8th day of January, 1962, and upon consideration of the same the court is of the opinion that said application should be denied.

Done this the 12 day of January, 1962.

Walter B. Jones, Circuit Judge.

[fol. 1048]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

NOTICE OF APPEAL—Filed January 22, 1962

To the Honorable Judges of Said Court:

Now comes National Association For The Advancement of Colored People, A Corporation, the Respondent in the matter referred to above and gives notice of appeal from the final decree of the Circuit Court of Montgomery County, Alabama, in Equity, rendered in said cause on the 29th day of December, 1961.

Fred D. Gray, Arthur D. Shores, Robert L. Carter, Orzell Billingsley, Jr., Peter A. Hall. By: Fred D. Gray, Solicitors for Respondent.

Done this 22nd day of January, 1962.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

BOND FOR SECURITY OF COSTS OF APPEAL—Filed and Approved January 22, 1962

We, the National Association For The Advancement Of Colored People, A Corporation, hereby acknowledge its self security for all cost of appeals to the Supreme Court of

Alabama from the decree rendered in the above entitled cause on the 29th day of December, 1961; and hereby agree to pay all such cost. And for the payment of this bond, we hereby waive our rights of exemption to real and personal property under the Constitution and Laws of the State of Alabama.

Witness our hand and seal this 22nd day of January, 1962.

National Association for the Advancement of Colored People. By Fred D. Gray, Respondent's Attorney.

$2,000.00 Cash Bond.

Taken and approved, this 22nd day of January, 1962.

Geo. H. Jones, Jr., Register.

[fol. 1050]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

In Equity.

CERTIFICATE OF APPEAL—January 22, 1962

#30468

STATE OF ALABAMA, On the Relation of MACDONALD GALLION, Attorney General of the State of Alabama, Complainant,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation, Respondent.

I, Geo. H. Jones, Jr., as Register of the Circuit Court of Montgomery County, Alabama, In Equity, do hereby certify that an appeal was taken to the Supreme Court of Alabama in the above stated cause on the 22nd day of January, 1962, by the Respondent, National Association for the Advancement of Colored People, a Corporation, from a decree rendered on the 29th day of December, 1961, and

that said appeal is made returnable to the 23rd day of March, 1962.

I further certify that a $2,000.00 cash bond was deposited in Court to cover costs of said appeal.

Given under my hand and seal of office, this the 22nd day of January.

Geo. H. Jones, Jr., As Register of the Circuit Court of Montgomery County, Alabama, In Equity.

(SEAL)

[fol. 1051] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1052]

IN THE SUPREME COURT OF ALABAMA

3rd Div. 996

NATIONAL ASSO. FOR THE ADVANCEMENT OF COLORED PEOPLE

vs.

STATE EX REL. MACDONALD GALLION, as Attorney General of Alabama

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ORDER OF SUBMISSION—December 18, 1962

Come the parties by attorneys and argue and submit this cause for decision.

IN THE SUPREME COURT OF ALABAMA

MONTGOMERY CIRCUIT COURT,
IN EQUITY

Present: All the Justices

3rd Div. 996

NATIONAL ASSO. FOR THE ADVANCEMENT OF COLORED PEOPLE

vs.

STATE OF ALABAMA

JUDGMENT—February 28, 1963

Come the parties by attorneys, and the record and matters therein assigned for errors being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It Is Therefore Considered, Ordered, Adjudged and Decreed that the decree of the Circuit Court be in all things affirmed.

It Is Further Considered, Ordered, Adjudged and Decreed that the appellant, The National Association for the Advancement of Colored People, a Corporation, pay the costs accruing on said appeal in this Court and in the Court below.

And it appearing that said parties have waived their rights of exemption under the laws of Alabama, it is ordered that execution issue accordingly.

(Livingston, C. J., Simpson, Merrill and Harwood, JJ., concur.)

[fol. 1053]

IN THE SUPREME COURT OF ALABAMA

3 Div. 996

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corp.

v.

STATE OF ALABAMA

Appeal from Montgomery Circuit Court, In Equity

OPINION—February 28, 1963

Merrill, Justice.

This appeal is from a final decree of the Circuit Court of Montgomery County, in Equity, dissolving a previously issued temporary injunction, but permanently enjoining and restraining appellant from conducting intrastate business in Alabama, and ousting appellant from this State. The decree was entered on December 29, 1961.

[fol. 1054] This appeal requires an affirmance of the decree of the lower court without a consideration of the merits of the case.

This court has one set of rules for all litigants, and all are treated alike, regardless of whom they may be. We are not a court which treats most litigants one way, but has favored and special treatment for the litigant who comes into court on an alleged racial issue.

Rules of procedure are not traps concocted to evade decisions. Our present rules were framed at the request of the bar and in consultation with a committee of the bar. They were "adopted to facilitate business and be an aid to the court in its prompt and orderly disposition, a result in which the profession and those whom it represents are greatly interested." *Ogburn-Griffin Gro. Co.* v. *Orient Ins. Co.*, 188 Ala. 218, 66 So. 434; *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341; *Wilson* v. *McClendon*, 259 Ala. 382, 66 So. 2d 924.

Our determination of this appeal does not require examination beyond appellant's brief. The brief contains an adequate "State of Case," "Statement of Facts" and "Propositions of Law," but it is the "Argument" section which is inadequate.

Supreme Court Rule 9, requires in subsection (d), that the argument section of an appellant's brief contain "argument with respect to errors assigned which counsel desire to insist upon." The rule plainly states that assignments of error are to be argued in the argument section of a brief. The reason for this rule was set out explicitly by the Court of Appeals in *De Graaf* v. *State*, 34 Ala. App. 137, 37 So. 2d 130, as follows: "The office of an appellate brief is to [fol. 1055] aid an appellate court to understand quickly the issues involved, and by points, propositions and arguments, supported where possible by citation of authority, present to the court the questions in controversy."

An assignment of error is an instrument of appellant pleading, *Board of Education of Colbert County* v. *Mitchell*, 270 Ala. 594, 121 So. 2d 103; *Wetzel* v. *Hobbs*, 249 Ala. 434, 31 So. 2d 639, and only adverse rulings of the trial court are subject to an assignment of error and reviewable on appeal. *Clark* v. *Hudson*, 265 Ala. 630, 93 So. 2d 138; *Central of Georgia Ry. Co.* v. *McDaniel*, 262 Ala. 227, 78 So. 2d 290.

Appellant has listed twenty-three assignments of error, but many of them are without merit because they present nothing for review. However, the mere listing of unmeritorious assignments of error is not a violation of any of the rules of appellate procedure, because those "not substantially argued in brief will be deemed waived and will not be considered by the court." Supreme Court Rule 9.

However, we have a rule of long standing and frequent application that where unrelated assignments of error are argued together and one is without merit, the others will not be considered. *Mize* v. *Mize*, 141 So. 2d 200; *Pak-A-Sak of Ala., Inc.* v. *Lauten*, 271 Ala. 276, 123 So. 2d 122; *McElhaney* v. *Singleton*, 279 Ala. 162, 117 So. 2d 375; *Shelby Co.* v. *Baker*, 269 Ala. 111, 110 So. 2d 896; *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198; *Ford* v. *Bradford*, 218 Ala. 62, 117 So. 429; 2A Ala. Dig., Appeal & Error, Key 736.

The reason for this rule is the same as the rule which requires assignments of error to be argued. With all of the [fol. 1056] volume of work before this court, it is simply a physical impossibility for the justices to go over every transcript of every appeal in civil cases to ascertain if reversible error may be lurking somewhere in the record. Appellants must assist the court in pointing out error if the docket of this court is to be workable. But, for insubstantial or unargued assignments of error to be lumped with seriously contested assignments of error actually makes our task more burdensome than if no assignments of error were made. For in such event, we must not only ascertain whether or not there was reversible error, but then we must comb the record to see if the error was properly raised and preserved. It was to eliminate such that the rules were promulgated.

The argument section of appellant's brief is divided into five different subdivisions, each dealing with the argument of two or more assignments of error.

Assignments of error 11 and 16 are argued together in Subsection I. No. 11 reads:

> "That the Final Judgment herein entered constitutes a denial to Appellant and its members of the right to freedom of speech and freedom of association secured under the Fourteenth Amendment to the Constitution of the United States."

This statement probably would be adequate as a proposition of law or as a conclusion in an argument, but it is not sufficient as an assignment of error. The office of an as- [fol. 1057] signment of error is not to point out legal contentions but only to inform this court that appellants assign as erroneous certain named rulings. *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539; *Kinnon* v. *Louisville & Nashville R. Co.*, 187 Ala. 480, 65 So. 397.

A more specific statement was made as to assignment of error No. 17 in *Roan* v. *Smith*, 272 Ala. 538, 133 So. 2d 224, than as to assignment 11 in the instant case, but we held it insufficient because it not only failed to "state that the

court erred," but it did not "show any way in which the court erred."

Since assignment of error 11 was without merit and was argued together with unrelated assignment of error 16, neither will be considered by the court. *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198. We do not intimate that assignment No. 16 in the instant case presented anything for review.

In subsection II of appellant's argument, assignments of error 5, 6 and 7 are argued together. Number 7 is not related to 5 and 6, and reads:

> "The trial Court Judge erred in denying Appellant's Motion to recuse himself (trial Judge) from hearing this cause, and as such it constituted a denial of rights secured Appellant under the equal protection and due process of law clauses of the Fourteenth Amendment to the United States Constitution."

If the refusal of the trial court to recuse himself can be reviewed by this court on this appeal under assignment of [fol. 1058] error No. 7, it is a proper assignment; but if the question cannot now be considered, the assignment of error is without merit.

Our cases repeatedly hold that the appropriate remedy to require a judge or other judicial officer to recuse himself, or to require him to act when he has recused himself, is mandamus. *Hudson* v. *Sparks*, 272 Ala. 203, 129 So. 2d 664; *Riley* v. *Wilkinson*, 247 Ala. 231, 23 So. 2d 582; *Lindsey* v. *Lindsey*, 229 Ala. 578, 158 So. 522; *McConnell* v. *Goodwin*, 189 Ala. 390, 66 So. 675, Ann. Cas. 1917A, 839; *Ex parte State Bar Association*, 92 Ala. 113, 8 So. 768.

In the last cited case, this court, speaking through McClellan, J., decided that mandamus was the proper remedy, and said that the point "appears to be too well settled by the authorities to justify or even admit of much discussion."

The judge before whom a proceeding is brought must determine, in the first instance, the question of his own competency. This decision may present to him a delicate and difficult question, but in solving it he is without discretion, and his action, if erroneous, is subject to be controlled by

mandamus seasonably applied for. *Smith* v. *Pitts, Judge*, 139 Ala. 152, 36 So. 20; *Ex parte Dew*, 7 Ala. App. 437, 62 So. 261.

It was with these authorities in mind that we said in *Hudson* v. *Sparks*, 272 Ala. 203, 129 So. 2d 664, that the appropriate remedy to require a judge to recuse himself on account of bias or prejudice is mandamus, but the party seeking the recusal has the right to make the motion for [fol. 1059] recusal in the main proceeding in order to get a ruling by the court on which to base the application for mandamus.

In *Cook* v. *State*, 269 Ala. 646, 115 So. 2d 101, we said:

> "If, as argued, Judge Jones was not in fact a judge at the time and place, that proposition could only be raised or sustained in a direct proceeding against Judge Jones in which he is a party. Here, the objection was made to Judge Jones himself. Judge Jones was called upon to decide whether or not he was a qualified judge. This was a question only a judge could answer. The rule is that to determine the competency of the judge to act in a given case, the party objecting must bring an action in which the judge himself is a party. The question cannot be determined in a proceeding before the judge being questions, or on appeal. * * *"

Appellant evidently knew the law because it seasonably filed a mandamus proceeding in this court to require the trial judge to recuse himself, but then failed or refused to file a brief even after "the clerk of the court notified counsel for petitioner that brief and argument should be filed in accordance with the rule." (Supreme Court Rule 12, which requires the appellant to file a brief.) We had no alternative than to dismiss the action. *N.A.A.C.P.* v. *Jones*, 268 Ala. 504, 109 So. 2d 140.

[fol. 1060] Appellant had its day in court, it raised the question of recusal in the proper manner, its grounds then were the same as here argued, the proof was substantially the same, and the trial judge was properly made a party, yet appellant failed, after notice, to file the neces-

sary brief. We hold that appellant cannot now raise the question on appeal which it had raised in the mandamus proceeding, and could have secured an adjudication thereon if it had pursued the remedy available to it.

It follows that assignment of error 7 is without merit, and the other nonrelated assignments of error argued along with it will not be considered. *First National Bank of Birmingham* v. *Lowery*, 263 Ala. 36, 81 So. 2d 284.

Assignments of error 2, 3, 4, 8 and 17 are argued together in Subsection III. Nos. 2, 3 and 4 are related but are not related to No. 17. But Nos. 2, 3 and 4 charge error in that the judgment and decree are contrary "to the weight of the evidence" (2), "contrary to the law" (3), and "contrary to the evidence and the law" (4).

We have repeatedly held that this type of assignment of error is without merit and presents nothing for review. *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198; *Roan* v. *Smith*, 272 Ala. 538, 133 So. 2d 224; *Morris* v. *Yancey*, 272 Ala. 549, 132 So. 2d 754; *Mulkin* v. *McDonough Construction Co. of Ga.*, 266 Ala. 281, 95 So. 2d 921; *King* v. *Jackson*, 264 Ala. 339, 87 So. 2d 623.

Applying the same rule as heretofore applied to the previous subsections, none of the assignments of error will be considered. *Bertolla* v. *Kaiser*, 267 Ala. 435, 103 So. 2d 736.

[fol. 1061] Assignments of error 12, 22, 1, 13, 15, 19, 21, 18, 14 and 20 are argued together in Subsection IV of the argument section. Many of these assignments are unrelated, and some merely assign various reasons why appellant considers the decree to be erroneous. No. 14 deals with the preponderance of the evidence and presents nothing for review. *Thomas* v. *Brook*, 1 Div. 894, Sup. Ct. Ms.; *King* v. *Jackson*, 264 Ala. 339, 87 So. 2d 623. No. 19 contends that the judgment is without foundation in law or fact. Such an assignment is not sufficient. *Vickers* v. *Vickers*, 273 Ala. 645, 144 So. 2d 8, and cases there cited.

It is essential that assignments of error be predicated on a ruling of the court, and when they are not so predicated, they will be disregarded. *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539; *Central of Georgia*

Ry. Co. v. *McDaniel*, 262 Ala. 227, 78 So. 2d 290; *Life & Casualty Ins. Co.* v. *Womack*, 228 Ala. 70, 151 So. 880; *Kinnon* v. *Louisville & Nashville R. Co.*, 187 Ala. 480, 65 So. 397; *Freeman* v. *Blount*, 172 Ala. 655, 55 So. 293.

Since some of the assignments of error are without merit, we again apply the rule that where several assignments of error are grouped and argued together in brief, and one is found to be without merit, the court will not consider the others. *Bolton* v. *Barnett Lumber & Supply Co.*, 267 Ala. 74, 100 So. 2d 9.

Assignments of error 10, 16 and 23 are argued together in Subsection V of appellant's brief. No. 10 is unrelated to the others and charges that the court erred in denying appellant's motion for rehearing.

It is settled that a decree denying an application for rehearing will not support an appeal; nor is such a decree subject to review on assignments of error on appeal from [fol. 1062] the final decree. Equity Rule 62, Code 1940; *Long* v. *O'Mary*, 270 Ala. 99, 116 So. 2d 563; *O'Bar* v. *Town of Rainbow City*, 269 Ala. 247, 112 So. 2d 790; *Oliver* v. *Dudley*, 267 Ala. 87, 100 So. 2d 327; *Hipp* v. *McMurry*, 263 Ala. 11, 81 So. 2d 531; *Whitman* v. *Whitman*, 253 Ala. 643, 46 So. 2d 422; 2 Ala. Dig., Appeal & Error, Key 110; 2A Ala. Dig., Appeal & Error, Key 870(6).

Since assignment of error 10 is without merit and is argued with Nos. 16 and 23, the others are not considered. *Taylor* v. *Taylor*, 251 Ala. 374, 37 So. 2d 645.

This disposes of every assignment of error except No. 9, and as it was not argued in brief, it will be "deemed waived and will not be considered by the court." Supreme Court Rule 9.

We note that the decree appealed from is not a unit, where the purported assignments of error go to the entire decree. As already stated, one part of the decree, the dissolving of the temporary injunction, was favorable to appellant and in accord with its contentions.

From the foregoing, it is clear that nothing is presented to this court for review. We are in the same position as if, first, there were no assignments of error or an inadequate assignment; or second, no proper brief had been

filed. The failure to assign any errors or an inadequate assignment of errors requires the affirmance of the judgment below. *Stidham* v. *Stidham*, 264 Ala. 195, 86 So. 2d 294, and cases there cited. A decree will be affirmed where appellant files no brief insisting upon the assignments of error. *Farrior* v. *Stagg*, 44 So. 541; *Terry* v. *Schaeffer*, 239 Ala. 264, 194 So. 502; *Black* v. *State*, 269 Ala. 269, 112 So. 2d 792. In *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341, we said:

> [fol. 1063] "The brief here presented is too radically deficient to be considered as a valid argument of the errors assigned on the record, without a complete nullification of the rule. We think the substance of the rule is worth preserving, and it can be preserved only by its enforcement; viz., by holding that in this case all assignments of error are waived. In that view, the judgment must be affirmed."

It follows that the decree of the trial court is affirmed.

A final observation is in order. It came out in oral argument that on the same day this case was argued before this court on December 18, 1962, a motion was set for hearing in Federal District Court in Montgomery, which charged that submission of this case had been delayed from May to December by this court and that appellant believed that the delay was a deliberate one.

The charge that this delay was a deliberate one on the part of this court was false and without foundation in fact, and must have been known to have been false by counsel for appellant, because any experienced or informed attorney would have so known.

The decree was entered and filed December 29, 1961. The appeal was taken January 22, 1962. Appellant knew at that moment that it had approximately three and one-half months in which to get the case submitted in the event it desired to have the case set on the oral argument docket. [fol. 1064] The weeks for hearing orally argued cases from the various counties are set by Tit. 13, §§ 21 and 22, Code of 1940. Since 1896, the times for hearing cases from Montgomery County have been the third Monday after

the fourth Monday in November and the second Monday after the fourth Monday in April; those dates in 1962 were May 7 and December 17, and those dates were listed in the calendars published by this court and the Court of Appeals.

The record in this case is over 1347 pages and is in three volumes, yet it was filed in this court on March 19, 1962, less than the sixty day period allowed. Under our rules, appellant had thirty days from March 19 to file its brief. Had time been important, the brief could have been filed immediately.

But on April 16, just two days before the brief had to be filed, appellant requested and was granted fifteen additional days to file its brief and the time was extended to May 3. When this extension of time was requested, appellant then knew that the case could not be heard the week of May 7, and when the brief was filed and appellant requested oral argument, appellant knew that the cause would have to be carried over to the week of December 17, the week it was set, argued and submitted in this court. We repeat—any delay in the submission of this case in this court after the appeal was taken was caused wholly and exclusively by appellant.

This being an injunction case, if time had been important, Supreme Court Rule 47, as amended, 263 Ala. XXII, could have been invoked to secure an early submission. Not only [fol. 1065] was Rule 47 not invoked, but as already shown, the appellant was solely responsible for any delay from the time the decree was rendered to the date of submission in this court.

Affirmed.

Livingston, C. J., Simpson and Harwood, JJ., concur.

[fol. 1071]

IN THE SUPREME COURT OF ALABAMA

October Term 1962-63

3rd Div. 996

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corp.

v.

STATE OF ALABAMA

Appealed from Montgomery Circuit Court, In Equity

I, J. Render Thomas, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages numbered from 1 thru 335 and designated as Vol. I and pages 336 thru 1051 and designated as Vol. II and pages 748 thru 1038 and designated as Vol. III and pages 1052 thru 1070 contain a full, true and correct copy of the record and proceedings in the Supreme Court of Alabama in the above styled cause.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Building, this the 2nd day of April 1963.

J. Render Thomas, Clerk of the Supreme Court of Alabama.

[fol. 1072]

SUPREME COURT OF THE UNITED STATES

No. 169—October Term, 1963

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Petitioner,

vs.

ALABAMA EX REL. RICHMOND M. FLOWERS, Attorney General.

ORDER ALLOWING CERTIORARI—October 14, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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MAY 29 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. [redacted]169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation,

Petitioner,

v.

STATE OF ALABAMA *ex rel.* RICHMOND M. FLOWERS, Attorney General of the State of Alabama.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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IN THE

Supreme Court of the United States

October Term, 1962

No.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation,

Petitioner,

v.

STATE OF ALABAMA, *ex rel.* RICHMOND M. FLOWERS, Attorney General of Alabama.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Alabama entered on February 28, 1963, in the above-entitled cause.

Opinion Below

The opinion of the Supreme Court of Alabama is not reported and is printed as Appendix A, *infra* at page 1a. The decree of the Circuit Court of Montgomery County entered on December 29, 1961, permanently ousting petitioner from the State, is printed in Appendix C, *infra* at page 44a.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered on February 28, 1963 (R. 1052-1065). Jurisdiction of this Court is invoked under Title 28, United States Code,

Section 1257(3), petitioner having asserted in the courts below rights, privileges and immunities conferred by the Constitution and laws of the United States.

Question Presented

Whether petitioner, whose basic purpose is the elimination of racial discrimination throughout the United States through peaceful and lawful means, has been deprived of freedom of association, due process, and equal protection of the laws guaranteed in the First and Fourteenth Amendments of the Constitution of the United States, by the judgment of the Supreme Court of Alabama affirming the decision of the Circuit Court of Montgomery County permanently ousting petitioner from the State?

Statement

A. Prior Proceedings

Petitioner, a New York non-profit membership corporation, is engaged in attempting through lawful and peaceful activity to eliminate racial discrimination as a pattern of American life. Petitioner's chartered affiliates, designated as branches, have been active in Alabama since 1918, and prior to June 1, 1956, its Southeast Regional Office was located in Birmingham (R. 168). Petitioner sponsored activities throughout the State through this office, its affiliates and members, financed in part from the dues and contributions of citizens and residents of Alabama.

On June 1, 1956, the State filed a bill of complaint in the Circuit Court of the Fifteenth Judicial Circuit of Alabama. The complaint alleged that petitioner was maintaining its Southeast Regional Office in Birmingham, Alabama, and had organized local chapters in the State of

Alabama; had employed or paid Autherine Lucy and Polly Myers Hudson to encourage them to enroll as students at the University of Alabama; had furnished legal counsel to Autherine Lucy in her proceedings against the State University; had engaged in organizing and supporting illegal bus boycotts conducted by the residents of Montgomery, Alabama; and had failed to file its Articles of Incorporation and designate an authorized agent to receive service pursuant to Title 10, Sections 192, 193, and 194, Code of Alabama, 1940 and Article XII, Section 232 of the Constitution of Alabama; and that by these acts had done irreparable injury to the State. It was prayed that the petitioner be permanently ousted (R. 2-5).

On the same day, without notice or hearing, the circuit court entered *ex parte* a temporary restraining order and injunction which in effect ousted petitioner from the State and barred it from complying with the Alabama law requiring foreign corporations to register with the Secretary of State (R. 18).

Petitioner filed a motion to dissolve the injunction (R. 22, 23) and demurrers to the complaint (R. 27). On July 11, pursuant to a motion of the Attorney General, the court entered an interlocutory order requiring the petitioner to produce, among other things, the names and addresses of all of its members in the State (R. 31, 32).

Petitioner moved to set aside and vacate this order (R. 39), and at the same time filed its answer (R. 32-39) in which it admitted that it had not complied with the requirements of Sections 192-194, Title 10, Code of Alabama, 1940, and Article XII, Section 232 of the Constitution of the State. It denied that it had employed or paid money to Autherine Lucy or Polly Myers Hudson, but admitted that it had furnished counsel for Autherine Lucy in her controversy with the University of Alabama; and that it had provided moral and financial support

to the Negro residents of Montgomery in connection with their refusal to use the public transportation system, but denied that the boycott was illegal and all other allegations and inferences in the bill of complaint in respect to that matter.

Petitioner pointed out that it has a non-profit character and that its principal purposes and objects were to improve the status of Negroes in American life; that its branches were independent, unincorporated associations, holding charters permitting them to use petitioner's name; that it did no business in the State within the meaning of the Constitution and laws of Alabama; and that its activities exempted it from any requirements of registering as an out-of-state corporation under Title 10, Section 198, Code of Alabama, 1940. Moreover, petitioner alleged laches as a defense in view of the fact that N.A.A.C.P. branches had been in operation in Alabama since 1918; that the organization had been furnishing counsel and legal assistance to Negroes seeking vindication of their constitutional rights in Alabama since 1932; that it had opened its Southeast Regional Office in Birmingham in April of 1951, and had operated the same, openly and continuously since that time; that the State and the Attorney General's office were well aware of petitioner's existence in Alabama and that despite these undeniable facts, at no time did the State give notice to petitioner that it had not complied with the law or that proceedings for ouster would be commenced because of its failure to register; and that as a matter of fact, the Attorney General had recently been in correspondence with petitioner, and had at no time called upon petitioner to register, prior to seeking an *ex parte* injunction ousting it from the State.

Although petitioner alleged that it did not feel the necessity to register, it offered to do so, to waive its rights

in this regard and attached a copy of the forms filled out, requesting the court's permission to file them. Such permission was refused.

Because of petitioner's failure to comply with the interlocutory order requiring the disclosure of the names and addresses of its members to the Attorney General, it was adjudged in contempt (R. 41, 73). In due course this Court reversed the contempt decree. *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449.

Prior to the final decision in that case, a second contempt proceeding was commenced by the State on April 19, 1958 (R. 77-81). The basis of the allegation of contempt, upon which evidence was presented in a June 1958 hearing, was that petitioner had continued to do business in the State under the name of the Alabama State Co-ordinating Association in violation of the temporary restraining order and injunction (R. 205-316). These charges were based entirely upon "information and belief", and petitioner introduced testimony that it had no record of any correspondence between the N.A.A.C.P. and the Alabama State Co-ordinating Association (R. 293, 296, 312). In this proceeding, a motion was made for disqualification of the presiding judge. In support thereof, newspaper clippings were presented containing a statement made by the judge or on his behalf, which showed bias and prejudice toward the petitioner (R. 218-227, 229-249). Witnesses testified that the judge had appeared on television on May 5, 1958, and announced that he intended to give the N.A.A.C.P. a blow from which it would never recover (R. 250-251). The judge admitted that he believed the N.A.A.C.P. to be Communist dominated (R. 272). He refused to recuse himself (R. 281), and the proceedings were continued without final disposition.

In acting on the mandate of this Court in *N.A.A.C.P.* v. *Alabama*, *supra*, the Supreme Court of Alabama held that

petitioner had not complied with orders of the trial court other than that requiring disclosure of its membership list and, therefore, was still in contempt. Thereupon, it again affirmed the original contempt adjudication (268 Ala. 531). Its judgment was reversed by this Court for a second time (360 U. S. 240). On remand, the Supreme Court of Alabama failed to act on the mandate of this Court, and after vainly seeking a hearing on the merits, petitioner, on June 23, 1960, began proceedings in the United States District Court for the Middle District of Alabama (R. 546-626). This Court, on October 23, 1961, ordered the federal court to proceed to a trial of the issues involved unless the State of Alabama had provided petitioner with a hearing on the merits by January 2, 1962. Pursuant thereto, a hearing was set down in the Circuit Court of Montgomery County for December 27, 1961.

B. Evidence Presented in the Circuit Court of Montgomery County and Subsequent Proceedings

On December 11, 1961, respondent filed an amendment to its complaint (R. 135-136). On the 27th of December, 1961, the original complaint was further amended in respect to paragraph 9 by placing a period after the word "race" and striking the remainder of the paragraph (R. 151).

The hearing on the merits took place on December 27, 28, and 29, 1961 (R. 336-746). At the beginning of the hearing, counsel for petitioner observed that spectators were compelled to seat themselves on a segregated basis, and moved that the court permit all persons to be seated in the courtroom without regard to race or color. This motion was denied (R. 337), as was a motion that Negro witnesses and attorneys be referred to by the same courtesy titles as white witnesses and attorneys (R. 337-338).

The State introduced into evidence answers to interrogatories (R. 118) it had propounded on the subject of

petitioner's activities in Alabama; these answers indicated that the petitioner maintained no offices and had engaged in no activities in Alabama since June 1, 1956 (R. 131, 363-384).

The court received into evidence over petitioner's objections an attested copy of the opinion, conclusion and findings of fact of Judge Grooms in the case of *Autherine J. Lucy* v. *William F. Adams*, (R. 394-410). This opinion found that Miss Lucy had made certain false charges against the officials of the University of Alabama. The N.A.A.C.P. contended that furnishing counsel for Miss Lucy in her efforts to be admitted to the University of Alabama could not be illegal, since her right to go to the University had been vindicated by the federal courts (R. 357).

The court also received into evidence the judgment and sentence in the case of *State of Alabama* v. *M. L. King, Jr.* (R. 630-636). This case involved the conviction of Martin Luther King for conducting a boycott of segregated buses in Montgomery in an effort to secure the equal treatment of Negro passengers. Petitioner argued that there was no illegality in its moral and financial support of this effort, since the federal courts had vindicated in many decisions the right of Negro citizens to use public transportation facilities without racial discrimination (R. 357).

Testimony was then presented concerning the activities of the Alabama State Co-ordinating Association for Registration and Voting, in an attempt to show that this organization was connected with the N.A.A.C.P., and that petitioner, therefore, had been operating in the State after June 1, 1956, in violation of the court's injunction. One witness testified that an official of the Alabama State Co-ordinating Association attended a meeting in Georgia which was also attended by Roy Wilkins, Executive Secretary of the N.A.A.C.P. On cross-examination, he said that this was a meeting of representatives from various southern states and organizations concerning voter registration throughout

the South. The witness examined photographs of persons attending the meeting and erroneously identified some of them (R. 426-428). W. C. Patton, an official of the Alabama State Co-ordinating Association and a field representative for petitioner in the State of Alabama prior to 1956, testified that the Alabama State Co-ordinating Association was separate and distinct from the N.A.A.C.P. and that there was no connection between the two. He admitted that he occasionally spoke to Roy Wilkins on the telephone. He stated that he had transacted no business whatever for petitioner in the State of Alabama since June 1, 1956 (R. 448-456).

W. M. Eagerton, North Alabama Public Relations Manager for the Southern Bell Telephone Company, identified an unlisted telephone number as being that of W. C. Patton, and testified over petitioner's objections to telephone calls made from this number to persons residing within and without the State of Alabama (R. 456). On cross-examination, he said that he was not the custodian of the records of Southern Bell Telephone Company and that the subpoena for his appearance in court was directed to him and not to the Southern Bell Telephone Company. He also testified that the office of the Attorney General of Alabama had prior knowledge of the existence of these telephone calls. He further stated that he was the son of Ralph T. Eagerton, Sr. The court refused to permit petitioner to show that the witness' father and brother were employed by the State of Alabama (R. 516).

The Mayor of Tuskegee, Alabama, testified that he had received copies of the N.A.A.C.P. News printed by petitioner's Tuskegee Branch; those copies introduced into evidence were dated November 21, 1954 and November 28, 1954. On cross-examination the witness testified that to the best of his recollection he has not received a copy of any such pamphlet since June 1, 1956.

The first witness for petitioner was its Executive Secretary. He stated the objectives and purposes of the organization (R. 674); that in 1956 the former Attorney General of the State, John Patterson, had requested certain information which was immediately sent to him; and that petitioner had received no notice informing it that it was required to register. He also testified that petitioner had conducted no business of any kind and had maintained no office and solicited no memberships or funds within the State of Alabama since June 1, 1956 (R. 673-692).

Petitioner then called various state officials to show that during their tenure of office they had no personal knowledge of, nor did their records reflect, any action ever being commenced by the Attorney General of the State of Alabama against any other respondent similar to the action being brought against petitioner (693-701). Petitioner also called Mrs. Bettye Frink, then Secretary of State of Alabama; she testified that she issued a statement which appeared in the Alabama Journal which was derogatory towards petitioner and indicated a hostile attitude towards petitioner by the State of Alabama (R. 701-702). The chief of the Franchise Tax Division stated that his office had received a letter from the nonprofit First Manassas Corporation (R. 709) inquiring about qualifying to do business in the State. On October 4, 1960, a letter was sent to that organization informing the corporation that "your organization is exempt from qualifying in Alabama as a foreign corporation" (R. 712).

Other witnesses then testified that the Alabama State Co-ordinating Association was founded in 1952 before petitioner was ousted from the State and that it continued to exist up to the present time, and that it had no connection with petitioner (R. 729-746).

On December 29, 1961, the court entered a final decree in which it permanently restrained and enjoined the petitioner from conducting any business of any kind within the

State, from soliciting members, soliciting contributions or collecting membership dues or contributions and from filing with the Department of Revenue and Secretary of State any application or document for the purpose of qualifying to do business (R. 1041-1043). In sum, its *ex parte* temporary injunction, which had been in effect since June 1, 1956, was made permanent.

The petitioner filed a motion for rehearing on January 8, 1962 (R. 1044-1047). The motion was denied on January 12, 1962 (R. 1047). On January 22, 1962, petitioner filed a notice of appeal to the Supreme Court of Alabama (R. 1048-1050), and on March 19, 1962, the record in the cause was filed, along with the petitioner's assignment of errors (R. 1066-1070).

Petitioner's brief was filed in the Supreme Court of Alabama on April 27, 1962 (Appendix B, p. 11a). The case was argued on December 18, 1962 (R. 1052). The Supreme Court of Alabama rendered its decision in the above matter on February 28, 1963, affirming the decree of the Circuit Court of Montgomery County, permanently enjoining and restraining the petitioner from conducting business in Alabama and ousting petitioner from the State (R. 1052-1065). The court stated that: "This appeal requires an affirmance of the decree of the lower court without a consideration of the merits of the case . . . Supreme Court Rule 9, requires in subsection (d), that the argument section of an appellant's brief contain 'argument with respect to errors assigned which counsel desire to insist upon.' The rule plainly states that assignments of error are to be argued in the argument section of a brief" (R. 1054). The court held that this rule means that when assignments of error are argued "in bulk" and one assignment is without merit, the court is precluded from considering those argued with it "in bulk." The court then ruled that petitioner had violated this rule and that it, therefore, could not consider the appeal on its merits (R. 1062).

On April 1, 1963, petitioner filed a motion in the United States District Court for the Middle District of Alabama, asking that court to set the cause down for hearing on the merits, as mandated by this Court on October 23, 1961, since the Alabama Supreme Court had refused to base its final determination on the merits (Appendix D, p. 48a). Petitioner argued in its motion that its brief had not violated any procedural rule of the State of Alabama; that at no time prior to or during the hearing before the Supreme Court of Alabama was there any statement from court or counsel that the brief or appeal was jurisdictionally defective; and that the action of the Supreme Court of Alabama was in defiance of this Court's order and mandate of October 23, 1961 (Appendix D, p. 48a).

On April 30, 1963, the United States District Court denied the petitioner's motion for a hearing on the merits, holding: "Such action by this Court, if taken, would in effect constitute a review of the action of the Supreme Court of Alabama in its interpretation of its rules, which plaintiff says was 'a clear denial of due process.' The Supreme Court of the United States is the proper court to review this action by the Supreme Court of Alabama" (Appendix E, p. 51a).

Whereupon, petitioner brings the cause here, seeking a review by this Court of the judgment and decree of the Supreme Court of Alabama.

Reasons for Allowance of Writ

1. The judgment below, affirming a permanent injunction which ousts petitioner from the State of Alabama, is reviewable by this Court, since "[w]hatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis* v. *Wechsler*, 263 U. S. 22, 24; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281

U. S. 673, 682; *Rogers* v. *Alabama*, 192 U. S. 266; *Williams* v. *Georgia*, 349 U. S. 375; *Urie* v. *Thompson*, 337 U. S. 163; *Lawrence* v. *State Tax Commission of Mississippi*, 286 U. S. 276, 282; *Broad River Power Company ex rel. Daniel*, 281 U. S. 537; *New York Central* v. *New York and Penn. Co.*, 271 U. S. 124; *Ward* v. *Love County*, 253 U. S. 17. The decision of the Supreme Court of Alabama purports to be based not upon the issues in the case, but upon an alleged violation by petitioner of Rule 9(d) of the Rules of the Supreme Court of Alabama. This rule specifies that appellant's brief shall contain "argument with respect to errors assigned which counsel desire to insist upon." The court's interpretation of this rule was that when assignments of error are argued "in bulk" and one assignment is without merit, the court is precluded from considering others argued with it "in bulk."

The court's finding that petitioner violated Rule 9(d) was never raised either in the briefs of the State of Alabama or at the time of oral argument in this case. The court is now apparently taking the position that assignments of error are argued "in bulk" if they are argued under the same section or subsection heading, regardless of the separation of the argument by paragraphs or otherwise. No authority whatever and no language in the rules is offered to show that each assignment of error must appear in a different subsection. It would be difficult for the court to claim that this novel interpretation has been evolved to aid it in dealing with the issues in this case, since it would clearly be burdensome to the court to group the arguments under numerous separate and distinct headings when fewer headings are sufficient to deal with the arguments raised in the errors assigned. An examination of petitioner's brief (Appendix B, *infra*, p. 11a) will show that the court's contention that the assignments of error were argued "in bulk" is strained and arbitrary.

Moreover, the court's application of this rule is not even in accord with its own precedents. The refusal to consider the merits of this case was based not upon an exercise of discretion, but upon a finding by the court that it was required by the authority cited to reject such considerations and affirm the judgment of the court below:

"This appeal *requires* an affirmance of the decree of the lower court without a consideration of the merits of the case." (Emphasis added) (Appendix A, *infra* at p. 1a). An examination of the very authorities which the court cites for this disposition will show its invalidity. The court cites *Bolton* v. *Barnett Lumber Supply Co.*, 267 Ala. 74, 100 So. 2d 9 (1958), as authority for the proposition that where several assignments of error are grouped together and argued in a brief, the court will not consider the others if one is found to be without merit. What that case actually held was:

> We see no reason why there should be any real difficulty in complying with these rules. However, we have held that they are directory and if appellants' brief, even though not in compliance with the rule, fairly and helpfully makes the points upon which appellants rely, this court may in its discretion consider it.

The court proceeded to consider the cause on its merits.

The case of *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198, 200 (1957), also cited by the court, again illustrates how this rule is applied, for after stating that unrelated assignments of error should not be argued together, the court says: "However, we feel justified in saying that we have examined the evidence and it is ample to support the decree." The court then proceeded to examine each assignment of error on its merits. The same was done in *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539 (1956).

Also cited was *Shelby County* v. *Baker*, 269 Ala. 111, 110 So. 2d 896 (1959), where the court said that some of

the assignments of error were somewhat kindred and therefore considered them on their merits.

The court correctly cites *Pak-a-Sak of Alabama, Inc.* v. *Lauten*, 271 Ala. 276, 123 So. 2d 122 (1960), as an example of its refusal to consider an appeal on its merits. However, there is no resemblance between the facts in the instant case and those in *Pak-a-Sak* where it was noted at page 125 that "if appellants' brief can be said to contain an argument of any assignment of error it must be construed as arguing all of the assignments of error in bulk, as there is no reference in appellants' brief to any of the fourteen assignments of error." Similar are *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341 (1927), and *Board of Education of Colbert County* v. *Mitchell*, 270 Ala. 594, 121 So. 2d 103 (1960).

Not cited but very much in point are many other cases including *Guy* v. *Lancaster*, 250 Ala. 287, 290, 34 So. 2d 499, 502 (1948), where the court considered a brief with eighty assignments of error, not one of which was specifically argued with supporting authorities. The court stated, citing several cases, that its rule should be construed liberally. See also *Edge* v. *Bice*, 262 Ala. 273, 82 So. 2d 252, 254 (1955); *Simmons* v. *Cochran*, 252 Ala. 461, 41 So. 2d 579, 580 (1949); *Christian* v. *Fidelity and Casualty Co. of New York*, 264 Ala. 616, 88 So. 2d 840 (1956); *Brothers* v. *Brothers*, 94 So. 175 (1922); *Wood* v. *Wood*, 82 So. 2d 556 (1955); *Quinn* v. *Hannow*, 80 So. 2d 239 (1955); *Bell* v. *Fulgham*, 202 Ala. 217, 80 So. 39 (1918); *Stariha* v. *Hagood*, 40 So. 2d 85 (1949); *Kendall Alabama Co.* v. *City of Fort Payne*, 79 So. 2d 801 (1955); *City of Montgomery* v. *Mott*, 266 Ala. 422, 96 So. 2d 766 (1957); *State* v. *Farabee*, 268 Ala. 437, 108 So. 2d 148 (1959); *Brooks* v. *Everett*, 271 Ala. 380, 124 So. 2d 100 (1960).

In actuality, petitioner's brief in the instant case was more explicit than precedent required since, under Alabama law, when a decree which is a unit and not severable is

erroneous, the error permeates the entire unit and an assignment of errors in general terms is sufficient. *Birmingham Electric* v. *Alabama Public Service Commission*, 47 So. 2d 455 (1949); *Styles* v. *Lampert*, 94 So. 2d 784 (1957). The latter case also stands for the proposition that where a common thread runs through some of appellant's claimed errors, the court could review within the scope of the common point. This rationale was also followed in *Hartford Fire Insurance Co.* v. *Clark*, 258 Ala. 141, 61 So. 2d 19 (1952), and *Christian* v. *Fidelity and Casualty Co. of New York, supra*, in which the propositions of law cited in the brief were never referred back to any particular assignment of errors.

In view of the many cases cited above, the court's statement that: "This court has one set of rules for all litigants, and all are treated alike, regardless of whom [sic] they may be" has no validity.

The decision below in the instant case is clearly another obvious procedural device designed to prevent a review of the merits of the judgment of ouster against petitioner. Such a device is impermissible under the decision of this Court in *NAACP* v. *Alabama, supra* at 457, in which it was held: "Novelty in procedural requirements cannot be permitted to thwart review in this court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights. Cf. *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673." See also *Wright* v. *Georgia*, — U. S. —, 31 L. W. 4487. The petitioner has been forced to seek redress in this Court on three occasions since the issuance of the "temporary" restraining order in 1956. In the first two instances, the State had attempted to use a contempt judgment as a procedural barrier to a hearing on the merits; in the third instance, the Supreme Court of Alabama failed to act on the mandate of this Court.

The triviality of the points raised by the court below as a reason for barring consideration on the merits would,

even if applicable to petitioner, raise serious questions of due process which would require review and settlement by this Court. If a brief which clearly points to manifest error in the trial below can be ignored because of the grouping of its points or other trifling matters of form, the litigant may in effect be deprived of the right of appeal. Clearly, the opportunity to appeal an erroneous judgment is an essential element of the due process guaranteed in the Fourteenth Amendment of the Constitution of the United States.

2. The action of the Supreme Court of Alabama in improperly refusing to review the judgment of ouster against petitioner, in effect, constitutes a defiance of the mandate of this Court of October 23, 1961:

> The petition for a writ of certiorari is granted. The judgment below is vacated, and the case is remanded to the Court of Appeals with instructions to direct the District Court to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued. Pending the final determination of all proceedings in the state action, the District Court is authorized to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action. *Truax* v. *Corrigan*, 257 U. S. 312, 331-334.

Petitioner has been barred from Alabama without notice or hearing since 1956 under an *ex parte* injunction (R. 18). The State refused to accord a hearing on the merits until this Court issued its order of October 23, 1961, which directed a hearing on the merits in the federal court unless the State acted. A hearing on the merits took place five and a half years after the *ex parte* injunction was granted, and only because of the threat implied in this

Court's October 23, 1961, order. After that hearing, the trial court made the temporary injunction permanent (Appendix C, *infra*, p. 44a). Petitioner sought a review of this judgment, claiming grave errors in the conduct of the trial and the judgment of the trial court (R. 1066-1070), but review on the merits by the Supreme Court of Alabama was refused.

In denying petitioner's motion to grant a hearing on the merits, the United States District Court stated:

> Such action by this court, if taken, would in effect constitute a review of the action of the Supreme Court of Alabama in its interpretation of its rules, which plaintiff says was "a clear denial of due process." The Supreme Court of the United States is the proper court to review this action by the Supreme Court of Alabama (Appendix E, p. 51a).

While petitioner believes such jurisdiction exists, pursuant to this Court's October 23, 1961, decree, petitioner respectfully submits that justice demands that these proceedings be finally and conclusively determined. Such a final determination could be made by this Court on the present record before it on this petition.

A trial in the United States District Court would necessitate another presentation of the same evidence which constitutes the record in the Circuit Court of Montgomery County. More importantly, there would be further delay in final adjudication of petitioner's right to maintain an organizational structure in Alabama. This would further compound the injustice and denial of due process to which petitioner has already been subjected.

The record, which is now before this Court, contains all exhibits and testimony adduced by the State in support of its complaint for injunction, and the evidence presented by petitioner that its activities were at all times lawful. A decision ousting petitioner from the State was made in the trial court; since the Supreme Court of Ala-

bama, without examining the evidence, affirmed the decree of ouster, it was in effect deciding that no federal constitutional guarantee had been violated. Federal rights may be denied by the refusal of a state court to decide questions. *Lawrence* v. *Mississippi*, *supra*; *Dorchy* v. *Kansas*, 272 U. S. 306, 308-309; *Erie R. Co.* v. *Purdy*, 185 U. S. 148, 154; *Dewey* v. *Des Moines*, 173 U. S. 193, 199; *Roby* v. *Colehour*, 146 U. S. 153, 159-160.

The decision of the Supreme Court of Alabama confers jurisdiction on this Court. Under the circumstances of this case, due process requirements would be best served by a final determination on the merits by this Court based upon its own examination of the evidence in this cause. Cf. *Blackburn* v. *Alabama*, 361 U. S. 199; *Spano* v. *New York*, 360 U. S. 315; *Napue* v. *Illinois*, 360 U. S. 264; *Muir* v. *Louisville Park Theatrical Association*, 102 F. Supp. 525 (W. D. Ky. 1951), aff'd, 202 F. 2d 275 (C. A. 6, 1953), vacated and remanded, 344 U. S. 971; *Niemotko* v. *Maryland*, 340 U. S. 268, 271; *Feiner* v. *New York*, 340 U. S. 315, 316, 322, fn. 4; *Watts* v. *Indiana*, 338 U. S. 49, 50-51; *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 659; *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Baltimore & Ohio Railroad Company* v. *United States*, 298 U. S. 349, 372; *St. Joseph Stock Yards Company* v. *United States*, 298 U. S. 38, 49-55; *Norris* v. *Alabama*, 294 U. S. 587, 589, 590; *Ohio Valley Water Company* v. *Ben Avon Borough*, 253 U. S. 287.

3. The decision below is in conflict with prior decisions of this Court, which have recognized that freedom of association is protected against "regulatory measures which, no matter how sophisticated, cannot be employed in purpose or effect to stifle, penalize or curb the exercise of First Amendment rights." *NAACP* v. *Louisiana*, 366 U. S. 293, 296; *American Communications Ass'n* v. *Douds*, 339 U. S. 382; *United States* v. *Rumely*, 345 U. S. 41; *Shelton* v. *Tucker*, 364 U. S. 479; *Bates* v. *Little Rock*, 361 U. S. 516.

The Supreme Court of Alabama is attempting in the instant case to accomplish by indirection what it cannot do directly. There was no evidence that petitioner had violated the injunction barring it from the State, nor was any evidence adduced to show that petitioner had advocated or utilized any other than lawful means to secure its objective of obtaining equal citizenship rights for Negroes. The evidence that Martin Luther King was convicted of engaging in an illegal boycott to which petitioner gave moral and financial support, does not form a basis for or justify the injunction against petitioner; the purpose of the boycott was to integrate the buses in Montgomery. The right of Negro citizens to travel on buses on a non-segregated basis has been established by law, *Gayle* v. *Browder*, 352 U. S. 903, and hence petitioner's support of this right cannot be unlawful even though it is opposed by state officials. Cf. *Wright* v. *Georgia*, — U. S. —, 31 L. W. 4487, where the Court held:

> Obviously, however, one cannot be punished for failing to obey the command of an officer if that command is itself violative of the constitution.

Regarding the charges in respect to Autherine Lucy, there can be no doubt that NAACP attorneys may lawfully represent in the courts any litigant seeking to obtain Fourteenth Amendment rights. *NAACP* v. *Button*, 371 U. S. 415.

The only remaining basis to support the allegations of irreparable injury in the State's complaint is that petitioner engages in activities designed to eliminate various aspects of racial segregation in the State of Alabama. However, this Court has held in *Button*, *supra*, at page 430:

> We need not, in order to find constitutional protection for the kind of cooperative organizational activity disclosed by this record, whereby Negroes seek through lawful means to achieve legitimate political ends subsume such activity under a narrow,

> literal concept of freedom of speech, petition, or assembly. For there is no longer any doubt that the First and Fourteenth Amendments protect certain forms of orderly group activity. Thus we have affirmed the right "to engage in association for the advancement of beliefs and ideas."

The State of Alabama may not, because it is in disagreement with petitioner's goals, prohibit its members from exercising their right to freedom of association, upon which effective advocacy of individual beliefs is often dependent. As was said in *NAACP* v. *Alabama, supra* at 460:

> It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" secured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. See *Gitlow v. New York*, 268 U. S. 652, 666; *Palko* v. *Connecticut*, 302 U. S. 319, 324; *Cantwell* v. *Connecticut*, 310 U. S. 296, 303; *Staub* v. *City of Baxley*, 355 U. S. 313, 321.

The State has shown no subordinating interest which permits suppression of petitioner's activities. It cannot intrude on constitutional freedoms by enjoining lawful activities, nor by avoiding the rendering of a decision on the merits in an attempt to prevent this Court from meeting the actual issues in this case. Either method would, if permitted, constitute a forbidden discrimination in contravention of the holdings of this Court.

This case is of grave public importance because it represents an attempt by a state to circumvent the decisions of this Court which may be followed by other states as well.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion, Supreme Court of Alabama, February 28, 1963

MERRILL, *Justice*:

This appeal is from a final decree of the Circuit Court of Montgomery County, in Equity, dissolving a previously issued temporary injunction, but permanently enjoining and restraining appellant from conducting intrastate business in Alabama, and ousting appellant from this State. The decree was entered on December 29, 1961.

This appeal requires an affirmance of the decree of the lower court without a consideration of the merits of the case.

This court has one set of rules for all litigants, and all are treated alike, regardless of whom they may be. We are not a court which treats most litigants one way, but has favored and special treatment for the litigant who comes into court on an alleged racial issue.

Rules of procedure are not traps concocted to evade decisions. Our present rules were framed at the request of the bar and in consultation with a committee of the bar. They were "adopted to facilitate business and be an aid to the court in its prompt and orderly disposition, a result in which the profession and those whom it represents are greatly interested." *Ogburn-Griffin Gro. Co.* v. *Orient Ins. Co.*, 188 Ala. 218, 66 So. 434; *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341; *Wilson* v. *McClendon*, 259 Ala. 382, 66 So. 2d 924.

Our determination of this appeal does not require examination beyond appellant's brief. The brief contains an adequate "Statement of Case," "Statement of Facts" and "Propositions of Law," but it is the "Argument" section which is inadequate.

Supreme Court Rule 9, requires in subsection (d), that the argument section of an appellant's brief contain "argument with respect to errors assigned which counsel desire to insist upon." The rule plainly states that assignments of error are to be argued in the argu-

ment section of a brief. The reason for this rule was set out explicitly by the Court of Appeals in *De Graef* v. *State*, 34 Ala. App. 137, 37 So. 2d 130, as follows: "The office of an appellate brief is to aid an appellate court to understand quickly the issues involved, and by points, proposition and arguments, supported where possible by citation of authority, present to the court the questions in controversy."

An assignment of error is an instrument of appellate pleading, *Board of Education of Colbert County* v. *Mitchell*, 270 Ala. 594, 121 So. 2d 103; *Wetsel* v. *Hobbs*, 249 Ala. 434, 31 So. 2d 639, and only adverse rulings of the trial court are subject to assignment of error and reviewable on appeal, *Clark* v. *Mudson*, 265 Ala. 630, 93 So. 2d 138; *Central of Georgia Ry. Co.* v. *McDaniel*, 262 Ala. 227, 78 So. 2d 290.

Appellant has listed twenty-three assignments of error, but many of them are without merit because they present nothing for review. However, the mere listing of unmeritorious assignments of error is not a violation of any of the rules of appellate procedure, because those "not substantially argued in brief will be deemed waived and will not be considered by the court." Supreme Court Rule 9.

However, we have a rule of long standing and frequent application that where unrelated assignments of error are argued together and one is without merit, the others will not be considered. *Mize* v. *Mize*, 141 So. 2d 200; *Pak-A-Sak of Ala., Inc.* v. *Lauten*, 271 Ala. 276, 123 So. 2d 122; *McElhaney* v. *Singleton*, 270 Ala. 162, 117 So. 2d 375; *Shelby Co.* v. *Baker*, 269 Ala. 111, 110, So. 2d 896; *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198; *Ford* v. *Bradford*, 218 Ala. 62, 117 So. 429; 2A Ala. Dig., Appeal & Error, Key 736. The reason for this rule is the same as the rule which requires assignments of error

to be argued. With all of the volume of work before this court, it is simply a physical impossibility for the justices to go over every transcript of every appeal in civil cases to ascertain if reversible error may be lurking somewhere in the record. Appellants must assist the court in pointing out error if the docket of this court is to be workable. But, for insubstantial or unargued assignments of error to be lumped with seriously contested assignments of error actually makes our task more burdensome than if no assignments of error were made. For in such event, we must not only ascertain whether or not there was reversible error, but then we must comb the record to see if the error was properly raised and preserved. It was to eliminate such that the rules were promulgated.

The argument section of appellant's brief is divided into five different subdivisions, each dealing with the argument of two or more assignments of error.

Assignments of error 11 and 16 are argued together in subsection I. No. 11 reads:

> "That the Final Judgment herein entered constitutes a denial to Appellant and its members of the right to freedom of speech and freedom of association secured under the Fourteenth Amendment to the Constitution of the United States."

This statement probably would be adequate as a proposition of law or as a conclusion in an argument, but it is not sufficient as an assignment of error. The office of an assignment of error is not to point out legal contentions but only to inform this court that appellants assign as erroneous certain named rulings. *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539; *Kinnon* v. *Louisville & Nashville R. Co.*, 187 Ala. 480, 65 So. 397.

A more specific statement was made as to assignment of error No. 17 in *Roan* v. *Smith*, 272 Ala. 538, 133 So. 2d 224, than as to assignment 11 in the instant case, but we held it insufficient because it not only failed to "state that the court erred," but it did not "show any way in which the court erred."

Since assignment of error 11 was without merit and was argued together with unrelated assignment of error 16, neither will be considered by the court. *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198. We do not intimate that assignment No. 16 in the instant case presented anything for review.

In Subsection II of appellant's argument, assignments of error 5, 6 and 7 are argued together. Number 7 is not related to 5 and 6, and reads:

> "The trial Court Judge erred in denying Appellant's Motion to recuse himself (trial Judge) from hearing this cause, and as such it constituted a denial of rights secured Appellant under the equal protection and due process of law clauses of the Fourteenth Amendment to the United States Constitution."

If the refusal of the trial court to recuse himself can be reviewed by this court on this appeal under assignment of error No. 7, it is a proper assignment; but if the question cannot now be considered, the assignment of error is without merit.

Our cases repeatedly hold that the appropriate remedy to require a judge or other judicial officer to recuse himself, or to require him to act when he has recused himself, is mandamus. *Hudson* v. *Sparks*, 272 Ala. 203, 129 So. 2d 664; *Riley* v. *Wilkinson*, 247 Ala. 231, 23 So. 2d 582; *Lindsey* v. *Lindsey*, 229 Ala. 578, 158 So. 522; *McConnell* v. *Goodwin*, 189 Ala. 390, 66 So. 675, Ann. Cas.

1917A, 839; *Ex parte State Bar Association*, 92 Ala. 113, 8 So. 768.

In the last cited case, this court, speaking through McClellan, J., decided that mandamus was the proper remedy, and said that the point "appears to be too well settled by the authorities to justify or even admit of much discussion."

The judge before whom a proceeding is brought must determine, in the first instance, the question of his own competency. This decision may present to him a delicate and difficult question, but in solving it he is without discretion, and his action, if erroneous, is subject to be controlled by mandamus seasonably applied for. *Smith* v. *Fitts, Judge*, 139 Ala. 152, 36 So. 20; *Ex parte Dew*, 7 Ala. App. 437, 62 So. 261.

It was with these authorities in mind that we said in *Hudson* v. *Sparks*, 272 Ala. 203, 129 So. 2d 664, that the appropriate remedy to require a judge to recuse himself on account of bias or prejudice is mandamus, but the party seeking the recusal has the right to make the motion for recusal in the main proceeding in order to get a ruling by the court on which to base the application for mandamus.

In *Cook* v. *State*, 269 Ala. 646, 115 So. 2d 101, we said:

> "If, as argued, Judge Jones was not in fact a judge at the time and place, that proposition could only be raised or sustained in a direct proceeding against Judge Jones in which he is a party. Here, the objection was made to Judge Jones himself. Judge Jones was called upon to decide whether or not he was a qualified judge. This was a question only a judge could answer. The rule is that to determine the competency of the judge to act in a given case, the party objecting must bring

> an action in which the judge himself is a party. The question cannot be determined in a proceeding before the judge being questioned, or on appeal * * *."

Appellant evidently knew the law because it seasonably filed a mandamus proceeding in this court to require the trial judge to recuse himself, but then failed or refused to file a brief even after "the clerk of the court notified counsel for petitioner that brief and argument should be filed in accordance with the rule" (Supreme Court Rule 12, which requires the appellant to file a brief). We had no alternative than to dismiss the action. *N.A.A.C.P.* v. *Jones*, 268 Ala. 504, 109 So. 2d 140.

Appellant had its day in court, it raised the question of recusal in the proper manner, its grounds then were the same as here argued, the proof was substantially the same, and the trial judge was properly made a party, yet appellant failed, after notice, to file the necessary brief. We hold that appellant cannot now raise the question on appeal which it had raised in the mandamus proceeding, and could have secured an adjudication thereon if it had pursued the remedy available to it.

It follows that assignment of error 7 is without merit, and the other nonrelated assignments of error argued along with it will not be considered. *First National Bank of Birmingham* v. *Lowery*, 263 Ala. 36, 81 So. 2d 284.

Assignments of error 2, 3, 4, 8 and 17 are argued together in Subsection III. Nos. 2, 3 and 4 are related but are not related to No. 17. But Nos. 2, 3 and 4 charge error in that the judgment and decree are contrary "to the weight of the evidence" (2), "contrary to the law" (3), and "contrary to the evidence and the law" (4).

We have repeatedly held that this type of assignment of error is without merit and presents nothing for review. *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198; *Roan* v.

Smith, 272 Ala. 538, 133 So. 2d 224; *Morris* v. *Yancey*, 272 Ala. 549, 132 So. 2d 754; *Mulkin* v. *McDonough Construction Co. of Ga.*, 266 Ala. 281, 95 So. 2d 921; *King* v. *Jackson*, 264 Ala. 339, 87 So. 2d 623.

Applying the same rule as heretofore applied to the previous subsections, none of the assignments of error will be considered. *Bertolla* v. *Kaiser*, 267 Ala. 435, 103 So. 2d 736.

Assignments of error 12, 22, 1, 13, 15, 19, 21, 18, 14 and 20 are argued together in Subsection IV of the argument section. Many of these assignments are unrelated, and some merely assign various reasons why appellant considers the decree to be erroneous. No. 14 deals with the preponderance of the evidence and presents nothing for review. *Thomas* v. *Brook*, 1 Div. 894, Sup. Ct. Ms.; *King* v. *Jackson*, 264 Ala. 339, 87 So. 2d 623. No. 19 contends that the judgment is without foundation in law or fact. Such an assignment is not sufficient. *Vickers* v. *Vickers*, 273 Ala. 645, 144 So. 2d 8, and cases there cited.

It is essential that assignments of error be predicated on a ruling of the court, and when they are not so predicated, they will be disregarded. *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539; *Central of Georgia Ry. Co.* v. *McDaniel*, 262 Ala. 227, 78 So. 2d 290; *Life & Casualty Ins. Co.* v. *Womack*, 228 Ala. 70, 151 So. 880; *Kinnon* v. *Louisville & Nashville R. Co.*, 187 Ala. 480, 65 So. 397; *Freeman* v. *Blount*, 172 Ala. 655, 55 So. 293.

Since some of the assignments of error are without merit, we again apply the rule that where several assignments of error are grouped and argued together in brief, and one is found to be without merit, the court will not consider the others. *Bolton* v. *Barnett Lumber & Supply Co.*, 267 Ala. 74, 100 So. 2d 9.

Assignments of error 10, 16 and 23 are argued together in Subsection V of appellant's brief. No. 10 is unrelated to the others and charges that the court erred in denying appellant's motion for rehearing.

It is settled that a decree denying an application for rehearing will not support an appeal; nor is such a decree subject to review on assignments of error on appeal from the final decree. Equity Rule 62, Code 1940; *Long* v. *O'Mary*, 270 Ala. 99, 116 So. 2d 563; *O'Bar* v. *Town of Rainbow City*, 269 Ala. 247, 112 So. 2d 790; *Oliver* v. *Dudley*, 267 Ala. 87, 100 So. 2d 327; *Hipp* v. *McMurry*, 263 Ala. 11, 81 So. 2d 531; *Whitman* v. *Whitman*, 253 Ala. 643, 46 So. 2d 422; 2 Ala. Dig., Appeal & Error, Key 110; 2A Ala. Dig., Appeal & Error, Key 870(6).

Since assignment of error 10 is without merit and is argued with Nos. 16 and 23, the others are not considered. *Taylor* v. *Taylor*, 251 Ala. 374, 37 So. 2d 645.

This disposes of every assignment of error except No. 9, and as it was not argued in brief, it will be "deemed waived and will not be considered by the court." Supreme Court Rule 9.

We note that the decree appealed from is not a unit, where the purported assignments of error go to the entire decree. As already stated, one part of the decree, the dissolving of the temporary injunction, was favorable to appellant and in accord with its contentions.

From the foregoing, it is clear that nothing is presented to this court for review. We are in the same position as if, first, there were no assignments of error or an inadequate assignment; or second, no proper brief had been filed. The failure to assign any errors or an inadequate assignment of errors requires the affirmance of the judgment below. *Stidham* v. *Stidham*, 264 Ala. 195, 86 So. 2d 294, and cases there cited. A decree will be affirmed where appellant files no brief insisting upon the assignments of error. *Farrior* v. *Stagg*, 44 So. 541; *Terry*

v. *Schaeffer*, 239 Ala. 264, 194 So. 502; *Black* v. *State*, 269 Ala. 269, 112 So. 2d 792. In *Bransford* v. *Glennon*, 216 Ala. 72, 112 So. 341, we said:

> "The brief here presented is too radically deficient to be considered as a valid argument of the errors assigned on the record; without a complete nullification of the rule. We think the substance of the rule is worth preserving, and it can be preserved only by its enforcement; viz., by holding that in this case all assignments of error are waived. In that view, the judgment must be affirmed."

It follows that the decree of the trial court is affirmed.

A final observation is in order. It came out in oral argument that on the same day this case was argued before this court on December 18, 1962, a motion was set for hearing in Federal District Court in Montgomery, which charged that submission of this case had been delayed from May to December by this court and that appellant believed that the delay was a deliberate one.

The charge that this delay was a deliberate one on the part of this court was false and without foundation in fact, and must have been known to have been false by counsel for appellant, because any experienced or informed attorney would have so known.

The decree was entered and filed December 29, 1961. The appeal was taken January 22, 1962. Appellant knew at that moment that it had approximately three and one-half months in which to get the case submitted in the event it desired to have the case set on the oral argument docket.

The weeks for hearing orally argued cases from the various counties are set by Tit. 13, §§ 21 and 22, Code 1940.

Since 1896, the times for hearing cases from Montgomery County have been the third Monday after the fourth Monday in November and the second Monday after the fourth Monday in April; those dates in 1962 were May 7 and December 17, and those dates were listed in the calendars published by this court and the Court of Appeals.

The record in this case is over 1347 pages and is in three volumes, yet it was filed in this court on March 19, 1962, less than the sixty day period allowed. Under our rules, appellant had thirty days from March 19 to file its brief. Had time been important, the brief could have been filed immediately.

But on April 16, just two days before the brief had to be filed, appellant requested and was granted fifteen additional days to file its brief and the time was extended to May 3. When this extension of time was requested, appellant then knew that the case could not be heard the week of May 7, and when the brief was filed and appellant requested oral argument, appellant knew that the cause would have to be carried over to the week of December 17, the week it was set, argued and submitted in this court. We repeat—any delay in the submission of this case in this court after the appeal was taken was caused wholly and exclusively by appellant.

This being an injunction case, if time had been important, Supreme Court Rule 47, as amended, 263 Ala. XXII, could have been invoked to secure an early submission. Not only was Rule 47 not invoked, but as already shown, the appellant was solely responsible for any delay from the time the decree was rendered to the date of submission in this court.

Affirmed.

LIVINGSTON, C. J., SIMPSON AND HARWOOD, JJ., concur.

APPENDIX B

Brief Filed by Petitioner in the Supreme Court of Alabama

Statement of Case

This is an appeal from a final decree and judgment of the Circuit Court of Montgomery County, Alabama, in equity, rendered on the 29th day of December, 1961 (R. 1041-1043); said decree, among other things, permanently ousted appellant from doing business in the State of Alabama and enjoined appellant from filing with the Department of Revenue and the Secretary of State of the State of Alabama, any applications, papers or documents for the purpose of qualifying to do business within the State of Alabama.

On June 1, 1956, the State filed a Bill of Complaint in the Circuit Court of the Fifteenth Judicial Circuit of Alabama. The complaint alleged that appellant, the National Association for the Advancement of Colored People, was maintaining offices in Birmingham, Alabama, its Southeast Regional Office, and had organized local chapters in the State of Alabama; had employed or paid Autherine Lucy and Polly Myers Hudson to encourage them to enroll as students at the University of Alabama; had furnished legal counsel to Autherine Lucy in her proceedings against the University of Alabama; had engaged in organizing and supporting illegal boycotts conducted against the Capitol Motor Lines by the residents of Montgomery, Alabama; and had failed to file its Articles of Incorporation and designate an authorized agent to receive service pursuant to Title 10, Sections 192, 193 and 194, Code of Alabama 1940 and Article XII, Section 232 of the Constitution of Alabama that by these acts had done irreparable injury to the State, and prayed that the appellant be permanently ousted (R. 2-5).

On the same day, without notice or hearing to appellant, the Circuit Court entered *ex parte* a temporary restraining order and injunction which in effect ousted appellant from the State and barred appellant from complying with the

Alabama law requiring foreign corporations to register with the Secretary of State (R. 18).

Appellant filed a motion to dissolve the injunction (R. 22, 23), demurrers to the Bill (R. 27). On July 11, pursuant to a motion of the State, the court below entered an interlocutory order requiring the appellant to produce, among other things, the names and addresses of all of its members in the State (R. 31, 32).

Appellant moved to set aside and vacate this order (R. 36), and at the same time filed its Answer to the Bill (R. 32-39) in which it admitted that it had not complied with the requirements of Sections 192-194, Title 10, Code of Alabama, 1940, and Article XII, Section 232 of the Constitution of the State. It denied that it had employed or paid money to Autherine Lucy or Polly Myers Hudson, but admitted that it had furnished counsel for Autherine Lucy in her controversy with the University of Alabama; and admitted that it had provided moral and financial support to the Negro residents of Montgomery in connection with their refusal to use the public transportation system, but denied that the boycott was illegal and all other allegations and inferences in the Bill of Complaint in respect to that matter.

Appellant pointed out that it was a non-profit membership corporation, incorporated under the laws of the State of New York, and that its principal purposes and objectives were to improve the status of Negroes in American life; that its branches were independent, unincorporated associations, holding chapters granted by appellant permitting them to use appellant's name; that it did no business in the State within the meaning of the Constitution and laws of Alabama; and that its activities exempt it from requirements of registering as an out-of-state corporation under Title 10, by Section 198 of Title 10 of the Code of Alabama, 1940. Moreover, appellant alleged as a defense that the

state was barred by laches in these proceedings in view of the fact that N.A.A.C.P. branches had been in operation in Alabama since 1918; the organization had been furnishing counsel and legal assistance to Negroes seeking vindication of their constitutional rights in Alabama since 1932; that it had opened its Southeast Regional Office in Birmingham in April of 1951, and had operated the same, openly and continuously since that time; that during a long period of time attorneys engaged by appellant had represented Alabama Negroes in litigation defended by the State, and that the State and the Attorney General's office were well aware of appellant's existence in Alabama and that despite these undeniable facts at no time did the State give notice to appellant that it had not complied with the law or that proceedings for ouster would be commenced because of its failure to register with the Secretary of State; as a matter of fact, the Attorney General had recently been in correspondence with appellant and at no time called upon appellant to register, prior to these proceedings.

The Answer further alleged that the Bill of Complaint sought to prohibit persons from pursuing under the aegis of the N.A.A.C.P. lawful activities to secure an end to racial segregation and discrimination, in violation of the rights of appellant, its members and prospective members to freedom of speech, freedom of assembly, due process and equal protection of the laws.

Appellant alleged that no injury had resulted to any citizen of the State by its failure to register and that, hence, requisite equity jurisdiction was lacking. Appellant questioned the good faith of the State in instituting these proceedings.

In spite of the fact that appellant alleged that it did not feel the necessity to register, it offered to do so, to waive its right and attached a copy of the forms filled out, requesting the court's permission to file them.

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Because of the appellant's failure to comply with the order of the court and provide the State with the names and addresses of its members, it was adjudged in contempt (R. 41, 73). Eventually, this matter went to the Supreme Court of the United States and contempt decree was reversed in *N.A.A.C.P.* v. *Alabama*, 337 U. S. 449.

Prior to the final disposition of that case, a petition in contempt was filed by the State in the court below on April 19, 1958 (R. 77-113). In that proceeding, a motion was made by appellant to disqualify Walter B. Jones on the grounds of personal bias, alleging that in articles written by Mr. Jones and in TV and radio broadcasts, Judge Jones had made statements indicating a personal bias against the N.A.A.C.P. (R. 89-105). That motion was denied and these proceedings continued without final disposition.

After the judgment of the Supreme Court of the United States, the Supreme Court of Alabama held that appellant had not complied with orders of the court other than the order requiring disclosure of membership lists and was still in contempt, 268 Ala. 531.

The Supreme Court of the United States again reversed, 360 U. S. 240.

The Supreme Court of Alabama failed to act on the mandate of the Supreme Court of the United States and proceedings were begun in the United States District Court for the Northern District of Alabama on June 23, 1960 (R. 546-626) for the federal court to take jurisdiction of this cause. These proceedings eventually reached the Supreme Court of the United States. That Court, on October 23, 1961, — U. S. —, 30 L. W. 3130, ordered the federal court to a trial of the issues involved unless the State of Alabama had provided appellant with a hearing by January 2, 1962. Pursuant thereto, a hearing was set down in the Circuit Court for December 27, 1961.

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Interrogatories (R. 118) and the answers thereto (R. 131) are made a part of this record.

On December 11, 1961, respondent filed an amendment to its complaint (R. 135-136). At the pre-trial conference (R. 137-151, 318-385), appellant's motion to disqualify the presiding judge was renewed and denied (R. 148-149, 332-334).

On the 27th of December, 1961, at the trial, the original complaint was further amended in respect to paragraph 9 by placing a period after the word "race" and striking the remainder of the paragraph (R. 151).

The testimony on the original hearing on the motion for production of documents is set forth at R. 162-204. The testimony on the petition for contempt is set forth at R. 207-316. The hearing on the merits and the bill of complaint took place on December 27, 28 and 29, 1961 (R. 336-746).

On December 29, 1961, the court entered a final decree in which it permanently restrained and enjoined the appellant from conducting any business of any kind within the State, from soliciting members, soliciting contributions or collecting membership dues of contributions and from filing with the Department of Revenue and Secretary of State any application or document for the purpose of qualifying to do business (R. 1041-1043).

The appellant filed a motion for rehearing on January 8, 1962 (R. 1044-1047). The motion was denied on January 12, 1962 (R. 1047). On January 22, 1962, appellant filed a notice of appeal to this Court (R. 1048-1050), and on March 19, 1962, the record in this cause was filed in this Court, along with the appellant's assignment of errors.

STATEMENT OF FACTS

Appellant is a non-profit membership corporation organized under the laws of the State of New York. It en-

gages in no commercial enterprises (R. 675); its entire business is to get rid of inequalities of citizenship (R. 676-678). Its aims are to improve the status of Negroes in American life (R. 673, 674). Its various units are unincorporated associations which function pursuant to charter granted by the National Office. Appellant seeks to achieve its objectives through peaceful and lawful means (R. 674), and does not condone or employ violence (R. 675).

Its first units in Alabama were established in 1918 (R. 675). In June, 1956, prior to the injunction issued in these proceedings, appellant had approximately 12,000 members in the state (R. 685); a state wide organization, a Southeast Regional office in Birmingham, and a Regional Secretary and Field Secretary as employees of the national organization. Since June 1, 1956, this office was closed and all activities of appellant in Alabama were discontinued.

The evidence in this case was presented on three separate occasions. The first evidence was introduced on July 25, 1956, in connection with the appellee's motion to require appellant to produce certain books, papers and documents (R. 28-32, 165-204). This phase of the case was finally decided in N.A.A.C.P. v. Alabama, 357 U. S. 449. The next testimony was taken on Wednesday, June 18, and Friday, June 20, 1958. This evidence was in support of appellant's motion for disqualification of the presiding judge and in support of appellee's petition for contempt (second) (R. 89-105, 205-316). The hearing on the merit took place on December 27, 28, and 29, 1961.

In support of appellant's motion for disqualification of the presiding judge, the appellant presented testimony from the following witnesses: Grover C. Hall, Fred D. Gray, Solomon S. Seay, Jr., and Honorable Walter B. Jones. Appellant also relied upon the following exhibits, No. 1, Montgomery Advertiser, dated April 6, 1958, Page 5-B; No. 2, Montgomery Advertiser, May 4, 1958, Page 7-B; No.

3, Montgomery Advertiser, May 12, 1958, Page 4-A; and No. 4, an article in "Alabama Bible Society Quarterly" Vol. XIII, dated October 1957.

GROVER C. HALL: The witness, Grover C. Hall, testified that he was editor-in-chief of the Montgomery Advertiser. This witness was used to lay the proper foundation for the introduction of appellant's exhibits No. 1 (R. 218-227); No. 2, (R. 229-244), and No. 3 (R. 245-249). Each of these exhibits contained statements made by the presiding judge or, on his behalf, which showed bias and prejudice toward appellant.

FRED D. GRAY: The witness, Fred D. Gray testified that he saw and heard a television program on May 5, 1958, over Montgomery, Alabama Television Station W.C.O.V., on this program, the presiding judge appeared as a candidate for re-election as Circuit Judge. The witness testified that according to his best recollection, the speech was short and the presiding judge said in effect the following: "That I intend to deal the N.A.A.C.P. and its counterpart, the Montgomery Improvement Association, a blow from which they will never recover. That's my best recollection of it" (R. 250-251).

SOLOMON S. SEAY: This witness testified that he also saw and heard the political telecast on W.C.O.V. TV, May 5, 1958, and that the presiding Judge said "I intend to deal the N.A.A.C.P. and its local counterpart, the Montgomery Improvement Association, a blow from which they will never recover or words to that effect" (R. 250-251).

HONORABLE WALTER B. JONES: The next witness that testified in support of Appellant's motion for disqualification was the presiding judge. He identified and admitted writing the article identified as Appellant's exhibit No. 4 (R. 257-272). This article contained statements which shows that the presiding judge was biased and prej-

udiced toward Appellant and toward the causes which Appellant advocates.

JOE AZBELL: In opposition to Appellant's motion for disqualification testimony was adduced from Joe Azbell. The witness Joe Azbell testified that he was the promotion manager of the Montgomery Advertiser and that he handled the advertisement which is Appellant's exhibit No. 2. He testified that the handling of the lay out of the proofs of the ads were handled by persons other than Judge Walter B. Jones (R. 275-277).

This case was heard on the merits on December 27, 28, and 29, 1961. At the beginning of the hearing Counsel for Appellant observed that the spectators were segregated based on race. Appellant moved the Court to enter an order whereby persons may be seated in the courtroom without regard to race and color. This motion was denied (R. 337). Appellant also made a motion that, Negro witnesses and lawyers be referred to by proper courtesy titles. This motion was denied (R. 337-338).

Appellee introduced the following documentary evidence: The questions and answers to the interrogatories propounded by the Appellee to the Appellant (R. 363-384). The Court received into evidence over Appellant's objection an attested copy of the opinion, conclusion and findings of facts of Judge Crooms in the case of *Autherine J. Lucy* v. *William F. Adams* (R. 394-410); Part of the Record in case of *N.A.A.C.P.* v. *MacDonald Gallion and Bettye Frink*, in the U. S. District Court for the Middle District of Alabama (R. 544-626). Over Appellant's objection the Judgment and Sentence in the case of *State of Alabama* v. *M. L. King, Jr.*, case no. 7399 was introduced (R. 630-636).

STEWART CULPEPPER.

The first witness to testify on behalf of Appellee was Stewart Culpepper, who testified substantially as follows:

He is a newspaper reporter, presently employed by the Atlanta Constitution and formerly employed by the Montgomery Advertiser and was so employed in 1957. In the month of November, 1957 he was in Atlanta, Georgia covering a meeting at which meeting Roy Wilkins, the Executive Secretary of Appellant was one of the presiding officers. He further testified that W. C. Patton attended the two day meeting in Atlanta.

On cross-examination he testified that this was a meeting of representatives from the various Southern states and various organizations which was being held on the question of voter registration throughout the South. Over Appellant's objection several photographs of persons attending the meeting were introduced into evidence. Some of these persons were erroneously identified by the witness (R. 426-428).

T. A. MAY.

The next witness for the Appellee was T. A. May who testified substantially as follows:

He was district manager for Western Union in Birmingham, Alabama and held that position in August of 1961. On August 6, 1961, a telegram was sent from Birmingham by W. C. Patton to C. W. Lee at the Sheraton Park Hotel in Washington, D. C. and charged to telephone number 592-9366. Over Appellant's objection the contents of the telegram was read and received into evidence (R. 430-431).

C. W. LEE.

C. W. Lee a witness for Appellee testified that he knew W. C. Patton of Birmingham, Alabama and that at one time he, the witness, was a member of Appellant's organization but has not been a member since 1956. On August 6, 1961 he was a guest at the Sheraton Park Hotel in Washington, D. C. and received a telegram from W. C. Patton.

The witness was attending a meeting of National Negro Funeral Directors Association. The telegram that he received from Mr. Patton was on behalf of the Alabama State Co-Ordinating Association for registration and voting, asking that the funeral directors association make a contribution to the Alabama Co-Ordinating Association. This telegram had nothing at all to do with Appellant (R. 441).

W. C. PATTON.

W. C. Patton was called as a witness for Appellee and testified substantially as follows:

That he is colored and have been connected with Appellant, for about 12 to 15 years. At various times he has held positions with Appellant branches in Alabama. That prior to 1956, he was field representative for Appellant in the State of Alabama. That he is an official in the Alabama State Co-Ordinating Association for registration and voting. However, that organization is a separate and distinct organization from Appellant and that there are no connections between the two. He admitted knowing Roy Wilkins, the Executive Secretary of Appellant and that on several occasions he has made telephone calls to him. This witness denied that he had transacted any business whatsoever for Appellant in the State of Alabama since June 1, 1956.

W. M. EAGERTON.

This witness is employed by the Southern Bell Telephone Company, and is the North Alabama Public Relations Manager for that company. He identified the unlisted telephone number as being that of W. C. Patton and testified over Appellant's objection to telephone calls made from W. C. Patton's phone number to Appellant's office in New York and to other persons who reside both within and outside the state of Alabama (R. 456).

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On cross-examination he testified that he was not the custodian of the records of Southern Bell Telephone Company and that the subpoena for his appearance in court was directed to him directly and not to the Southern Bell Telephone Company. He also testified that the Attorney General's office had prior knowledge of the existence of these telephone calls. He further testified that he is the son of Ralph T. Eagerton, Sr. The Court refused to permit Appellant to show that this witness' father and his brother were employees of Appellee (R. 512-517).

PHIL M. LIGHTFOOT.

This witness called by the Appellee, testified that in 1954, when he was Mayor of the City of Tuskegee, Alabama, he received a copy of the National Association for the Advancement of Colored People News (Tuskegee Branch), Volume 1, #4 and Volume 1, #5. These newsletters were dated November 21, 1954 and November 23, 1954 respectively. On cross-examination the witness testified that to his best recollection he has not received a copy of any such pamphlet since June 1, 1956.

DR. C. J. ROHLING.

Dr. Rohling testified that he is the State Toxicologist and over Appellant's objection identified the signature on an application for an operator's license, as being the same signature as that that appeared on Appellee's exhibit 24. Over Appellant's objection the Court admitted it to evidence Appellee's exhibits 23 & 24. Said exhibits having not been connected in any way with Appellant.

The last witness Mr. Harry Cobbs testified that he is employed by the First National Bank of Montgomery and over Appellant's objection the Court received into evidence a copy of the bank signature card of an account in the name of "Mrs. E. W. Taggert or Essie Bolden Taggert."

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At the conclusion of Appellee's case, Appellant moved to dismiss the Complaint, which motion was denied (R. 663-673).

Roy Wilkins.

The first witness for the Appellant was its Executive Secretary. He described the organizational structural of Appellant and stated the various states where it maintained local chapters. He also stated the objects and purposes of the organization, the principal purpose being to secure the constitutional and citizenship rights of the Negro minority in this country (R. 674). Appellant uses only lawful means for obtaining its objects and purposes. The witness further testified that it is a tax exempt organization under Federal laws. The witness further testified that in 1936, the present governor, the former Attorney General of this state, John Patterson requested certain information from Appellant which information was immediately sent to the then Attorney General. Appellant has received no notice informing it that it was required to register in order to do business in the State of Alabama. He also testified that Appellant has conducted no business of any kind within the State of Alabama since June 1, 1956, and has maintained no office and has solicited no membership nor funds in this State since that day.

Appellant called as witnesses, William F. Thetford, Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama; George H. Jones, Jr., Register of the Circuit Court of Montgomery County, Alabama; and John R. Matthews, Clerk of the Circuit Court of Montgomery County, Alabama (R. 698-704); and offered to prove by these witnesses that during their tenure in office they had no personal knowledge of nor neither did their records reflect an action ever commenced by the Attorney General of the State of Alabama against any other respondent similar to the action that was brought against Appellant.

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The Appellant called Mrs. Bettye Frink, Secretary of the State of Alabama as one of its witnesses. She testified that she issued a statement which appeared in the Alabama Journal which statement was derogatory toward Appellant and indicates a hostile attitude toward Appellant by the State of Alabama (R. 701-702).

W. C. McNair.

Mr. McNair testified substantially as follows:

That he is chief of the Franchise Tax Division for the State of Alabama, which division answers inquiries with reference to foreign corporations qualifying to do business in the State of Alabama. He testified that his office received a letter from the First Manassas Corporation (R. 709), inquiring about qualifying to do business in this state; and that on October 4, 1960 a letter was sent to that organization from his office informing that corporation that "your organization is exempt from qualifying in Alabama as a foreign corporation" (R. 712).

The last two witnesses for Appellant were William P. Mitchell and Charles C. Gomillion. The witness, Mitchell testified substantially as follows: That he is familiar with the Alabama State Co-ordinating Association for registration and voting; it was founded in 1952 and has continued to exist until today. He further testified that the Appellant has no control over the Alabama State Co-Ordinating Association for registration and voting and that said organization is not a subsidiary of Appellant.

The witness, Gomillion was the last witness to testify for Appellant. He testified that he is a life member of Appellant and has been for some time. However, he has not participated in any National Association for the Advancement of Colored People activities in this state since June 1, 1956. He further described the Tuskegee Civic Association and stated that the Appellant has not nor has

it attempted to dictate the policies of the Tuskegee Civic Association, and to his knowledge Appellant has engaged in no activities in the State of Alabama since June 1, 1956.

PROPOSITIONS OF LAW

PROPOSITION OF LAW I

THE PROCEEDINGS HEREIN AND THE JUDGMENT AND DECREE CONSTITUTE AN UNLAWFUL ABRIDGEMENT OF APPELLANT'S RIGHTS AND OF THE RIGHTS OF ITS MEMBERS TO FREEDOM OF SPEECH AND FREEDOM OF ASSOCIATION GUARANTEED AGAINST STATE INTRUSION UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

N.A.A.C.P. v. *Alabama*, 357 U. S. 449;
Bates v. *Little Rock*, 361 U. S. 516;
Louisiana v. *N.A.A.C.P.*, 366 U. S. 293.

PROPOSITION OF LAW II

APPELLANT HAS BEEN DENIED IN THE PROCEEDINGS AND BY THE JUDGMENT ENTERED THEREON A FAIR AND IMPARTIAL HEARING REQUIRED UNDER THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

State ex rel. La Russa, et al. v. *Himes*, 197 So. 762 (1940);
In Re Murchison, 349 U. S. 133;
Moore v. *Dempsey*, 261 U. S. 86.

PROPOSITION OF LAW III

RESPONDENT HAS NO STATUTORY AUTHORITY TO OUST APPELLANT, AND IS BARRED FROM DOING SO IN EQUITY BY EQUITABLE PRINCIPLES AND BY LACHES.

Pepperell Mfg. Co. v. *Ala. National Bank*, 261 Ala. 665 (1954);

United States v. *Stinson*, 125 F. 907 (C. A. 7, 1903), affirmed 197 U. S. 200;
Brown v. *Tuskegee Light and Power Co.*, 232 Ala. 361, 168 So. 159 (1936);
Daniell v. *Sherrill*, 48 So. 2d 736 (Fla. 1950).

PROPOSITION OF LAW IV

THE JUDGMENT ENTERED HEREIN IS SO GROSSLY CONTRARY TO THE EVIDENCE AND APPLICABLE LAW AS TO VIOLATE APPELLANT'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW SECURED UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Southern Railway v. *Greene*, 216 U. S. 400;
Simonetti Bros. Produce Co. v. *Fox Brewing Co.*, 240 Ala. 91, 197 So. 38 (1940);
Freeman v. *Hewitt*, 329 U. S. 249;
Terral v. *Burke Construction Co.*, 257 U. S. 529;
Liggett v. *Baldridge*, 278 U. S. 105.

PROPOSITION OF LAW V

THESE PROCEEDINGS AND JUDGMENT ENTERED HEREIN CONSTITUTE STATE-IMPOSED RACIAL DISCRIMINATION IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES. Cf.

Gomillion v. *Lightfoot*, 364 U. S. 339;
Dawson v. *Mayor*, 350 U. S. 877;
Gayle v. *Browder*, 352 U. S. 903;
Holmes v. *City of Atlanta*, 124 F. Supp. 290 (N. D. Ga. 1954), aff'd 223 F. 2d 93 (C. A. 5th 1955) rev'd 350 U. S. 879;
Evers v. *Dwyer*, 358 U. S. 202;
Bailey v. *Patterson*, — U. S. —, 30 L. W. 4161.

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PROPOSITION OF LAW VI

THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION GUARANTEES PERSONS FREEDOM OF SPEECH AND FREEDOM OF ASSOCIATION.

United States Constitution, Fourteenth Amendment;
Pierce v. *Society of Sisters*, 268 U. S. 510;
Sweezy v. *New Hampshire*, 354 U. S. 234;
N.A.A.C.P. v. *Alabama*, 357 U. S. 449;
International Union v. *Wisconsin Employment Relation Board*, 336 U. S. 25;
Shalten v. *Tucker*, 364 U. S. 479;
Garner v. *Louisiana*, 368 U. S. 157;
Watkins v. *United States*, 344 U. S. 148;
Cantwell v. *Conn.*, 310 U. S. 296;
Talley v. *California*, 362 U. S. 60.

PROPOSITION OF LAW VII

A CORPORATION IS A PERSON UNDER THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION AND IS ENTITLED TO DUE PROCESS OF LAW.

Gulf, Colorado and Santa Fe R.R. Co. v. *Ellis*, 165 U. S. 150, 154;
Liggett v. *Baldridge*, 278 U. S. 105.

PROPOSITION OF LAW VIII

ALL GOVERNMENTAL ENFORCED RACIAL SEGREGATION IS IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE UNITED STATES.

Brown v. *Board of Education*, 347 U. S. 483;
Dawson v. *Mayor*, 350 U. S. 877;
Holmes v. *City of Atlanta*, 350 U. S. 879;
Gayle v. *Brower*, 352 U. S. 903;

New Orleans City Park Improvement Association v. *Detiege*, 358 U. S. 58;
Bailey v. *Patterson*, — U. S. —, 30 L. W. 4164, decided February 27, 1962;
Turner v. *Memphis*, — U. S. —, 30 L. W. 4262, decided March 27, 1962.

PROPOSITION OF LAW IX

STATE REGULATIONS AND STATE ACTION WHICH, IN PURPOSE AND EFFECT IMPOSES DISCRIMINATION IS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION.

Yick Wo v. *Hopkins*, 118 U. S. 356;
Oyama v. *California*, 332 U. S. 633;
Takahashi v. *Fish and Game Commission*, 334 U. S. 410;
Gomillion v. *Lightfoot*, 364 U. S. 339.

PROPOSITION OF LAW X

DUE PROCESS AND EQUAL PROTECTION OF THE LAW IN A JUDICIAL PROCEEDING REQUIRES A FAIR TRIAL IN A FAIR TRIBUNAL.

In Re Murchison, 349 U. S. 133;
United States ex rel. Darcy v. *Handy*, 203 F. 2d 407 (C. A. 3, 1953);
Moore v. *Dempsey*, 261 U. S. 86.

PROPOSITION OF LAW XI

BIAS ON THE PART OF A TRIAL JUDGE DENIES A LITIGANT EQUAL PROTECTION AND DUE PROCESS OF LAW.

State ex rel. McFerran v. *Justice Court*, 32 Wash. 2d 544, 202 P. 2d 927 (1949);
Ex Parte Wallace, 24 Col. App. 2d 933, 152 P. 2d 1 (1944);

Tumay v. *Ohio*, 273 U. S. 50;
Ex Parte Cornwell, 144 Ala. 497, 39 So. 354 (1905);
State ex rel. La Russa, et al. v. *Himes*, 197 So. 762 (1940).

PROPOSITION OF LAW XII

TITLE 10, SECTIONS 192, 193 AND 194, CODE OF ALABAMA, 1940, ARE MERE VENUE AND SERVICE OF PROCESS PROVISIONS WITH RESPECT TO FOREIGN CORPORATIONS, AND CAN BE MADE THE BASIS FOR EXCLUSION OF A FOREIGN CORPORATION ONLY IF THE PROVISIONS ARE APPLICABLE TO IT AND IT CONTINUES TO REFUSE TO COMPLY.

Pepperell Mfg. Co. v. *Ala. National Bank*, 261 Ala. 665 (1954);
Cadden-Allen, Inc. v. *Trans-Lux News Corp.*, 254, 234 Ala. 400.

PROPOSITION OF LAW XIII

WHEN A STATE SUBMITS ITSELF TO THE JURISDICTION OF A COURT OF EQUITY AND PRAYS ITS AID, ITS CLAIMS AND RIGHTS ARE JUDICABLE BY EVERY OTHER PRINCIPLE AND RULE OF EQUITY APPLICABLE TO THE CLAIMS AND RIGHTS OF PRIVATE PARTIES UNDER SIMILAR CIRCUMSTANCES.

State of Iowa v. *Carr*, 191 F. 257, 266 (8th Civ., 1911);
Daniell v. *Sherrill*, 48 So. 2d 736 (Fla. 1950), 23 A. L. R. 2d 1410;
Brown v. *Tuskegee Light and Power Co.*, 232 Ala. 361, 367, 368, 168 So. 157, 165 (1936);
United States v. *Property on Panto Island*, 24 F. Supp. 92 (S. D. Ala. 1947);
State ex rel. Roberson v. *The Town of Pell City*, 157 Ala. 380, 47 So. 246 (1908);

Powell v. *City of Birmingham*, 258 Ala. 159, 167, 61 So. 2d 11, 18 (1952);
State v. *Ward*, 133 So. 2d 383 (Ala., 1961);
United States v. *Stinson*, 123 F. 907, 910 (7th Civ. 1903), affirmed 197 U. S. 200.

PROPOSITION OF LAW XIV

A State Has no Absolute Power to Exclude a Foreign Corporation from Doing Business in That State.

Southern Railway v. *Greene*, 216 U. S. 400;
Freeman v. *Hewitt*, 329 U. S. 249;
Simonetti Bros. Produce Co. v. *Fox Brewing Co.*, 240 Ala. 91, 197 So. 38;
Butler Bros. Shoe Co. v. *U. S. Rubber Co.*, 156 F. 1 (C. A. 8, 1907);
Crutcher v. *Kentucky*, 141 U. S. 47;
Terral v. *Burke Construction Co.*, 257 U. S. 529;
Western Union Telegraph Co. v. *Kansas ex rel. Coleman*, 216 U. S. 1;
Southern Railway v. *Greene*, 216 U. S. 400;
Hanover Fire Insurance Co. v. *Harding*, 272 U. S. 494.

PROPOSITION OF LAW XV

A State May Not Subject a Foreign Corporation to Unconstitutional Conditions in Order to do Business in That State.

Williams v. *Standard Oil Co.*, 278 U. S. 235;
Pullman Co. v. *Kansas ex rel. Coleman*, 216 U. S. 56;
People ex rel. Hakanson v. *Palmer*, 367 Ill. 543, 11 N. E. 2d 931 (1937);
Herndon v. *Chicago, Rock Island and Pacific Ry. Co.*, 218 U. S. 135;

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Harrison v. *St. Louis and San Francisco Ry. Co.*, 232 U. S. 319;
Donald v. *Phila. and Reading Coal and Iron*, 241 U. S. 329;
Burns Baking Co. v. *Bryan*, 264 U. S. 504, 513;
New State Ice Co. v. *Liebmann*, 285 U. S. 262.

ARGUMENT

The evidence shows that appellant is a civil rights organization. It engages in activities designed to achieve the elimination of inequalities of citizenship in the United States based upon race. There has been no evidence to show that appellant has advocated or utilized any other than lawful means to secure the objectives sought. Thus, appellant and its members are exercising rights of freedom of speech and association guaranteed under the Fourteenth Amendment to the Constitution of the United States against state interference. See *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Sweezy* v. *New Hampshire*, 354 U. S. 234; *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. Obviously, the fact that these rights are being asserted by individuals in concert with others does not render the activity illegal or subject to prohibition. See *International Union* v. *Wisconsin Employment Relations Board*, 336 U. S. 245. The final judgment in this case denied appellant and its members the right to freedom of speech and of association; this question is before the court under Assignment of Error Number 11.

Certainly, it cannot be illegal in Alabama for individuals to advocate that racial segregation is unlawful and should be abolished, in view of the fact that the fundamental law of the United States is to the effect that any governmental enforced racial segregation is at war with the guarantees of the Constitution of the United States. See *Brown* v.

Board of Education, 347 U. S. 483; *Dawson* v. *Mayor*, 350 U. S. 877; *Holmes* v. *City of Atlanta*, 350 U. S. 879; *Gayle* v. *Browder*, 352 U. S. 903; *New Orleans City Park Improvement Assn.* v. *Detiege*, 358 U. S. 58; *Bailey* v. *Patterson*, — U. S. —, 30 L. W. 4164, decided February 27, 1962; *Turner* v. *Memphis*, — U. S. —, 30 L. W. 4262, decided March 27, 1962. Thus, the judgment and decree in these proceedings must necessarily rest upon some basis other than that appellant engages in activities designed to eliminate various aspects of racial segregation in the State of Alabama.

There has been no showing, however, that appellant has performed any acts or engaged in any activities injurious to the state other than the fact that it is committed to the elimination of racial discrimination in the United States. It is true that the state has produced evidence, in the form of records of the proceedings to show that Autherine Lucy publicized charges of conspiracy against the University of Alabama officials and that at the hearing her attorneys stated that these allegations could not be proved. The connection of appellant in this instance is that it admitted in its answer that it had furnished counsel for Miss Lucy in her controversy with the University of Alabama. However one views this situation, there can be no basis in fact or law to warrant or justify the judgment herein as a subordinating state interest warranting the intrusion on rights of freedom of speech and association herein effected. Cf. *Shelton* v. *Tucker*, 364 U. S. 479; *Sweezy* v. *New Hampshire*, supra.

The evidence that Martin Luther King was convicted of engaging in an illegal boycott, which appellant admits to giving moral and financial support, is equally an inadequate ground upon which the state may ground a valid intrusion upon the free exercise of the rights of appellant and its members to freedom of speech and association guaranteed

under the Fourteenth Amendment to the Constitution of the United States. Cf. *Garner* v. *Louisiana*, 368 U. S. 157.

There is no possible basis other than the two instances cited above to support the allegations in the complaint in respect to the charges of irreparable injury. But these instances cannot possibly separately or in concert afford that compelling justification essential to validate a state interference with freedom of speech and association which the judgment of the Court herein affects. See *Watkins* v. *United States*, 344 U. S. 148; *United States* v. *Rumely*, 345 U. S. 41; *Wieman* v. *Updegraff*, 344 U. S. 148; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Talley* v. *California*, 362 U. S. 60.

The evidence shows that appellant is being ousted from Alabama for the simple reason that it is an organization concerned with civil rights of Negroes in the United States. Appellant submits that such an attempt to enforce and perpetuate racial segregation is a denial of rights secured by the First and Fourteenth Amendments, as was stated in Assignment of Error Number 16. The Fourteenth Amendment clearly proscribes state direct or indirect interference with legitimate and lawful activities in this connection. Thus, unless some other basis for the judgment can be disclosed, since it obviously constitutes an intrusion on rights of free speech and assembly of appellant and its members, the judgment cannot stand.

II

The essence of due process and equal protection in a judicial proceeding is a fair trial in a fair tribunal. *In re Murchison*, 349 U. S. 133; *United States ex rel. Darcy* v. *Handy*, 203 F. 2d 407 (C. A. 3, 1953).

The record in this case demonstrates not only the atmosphere of bias surrounding the whole proceeding but also the personal bias of the presiding judge. Spectators at the trial were compelled to take seats on a segregated

basis (R. 337) and a motion to integrate the courtroom was denied. Appellant submits in Assignment of Error Number 5 that this denial was a deprivation of procedural and substantive due process and equal protection.

White witnesses were politely addressed as Mr. or Mrs., while Negro witnesses were not given any courtesy title. A motion that witnesses of both races should be addressed in the same manner was also denied (R. 330); the question of deprivation of Fourteenth Amendment rights in this denial is before the court under Assignment of Error Number 6.

It is well-settled in the law that when public sentiment affects the fairness of a trial, due process has been denied *Moore* v. *Dempsey*, 261 U. S. 86. In the instant case, where witnesses and spectators were not treated equally, on the grounds of "custom" (R. 337, 338), it is clear that biased community sentiment pervaded the judicial proceedings.

The trial judge was a vigorous exponent of white supremacy; and completely committed to halting any inroads on segregation made by appellant (R. 228, 242, 247-249, 252, 258, 271). He had a particular bias against appellant, and had publicly in and out of court accused it of being Communist-dominated (R. 272). He furthermore had publicly proclaimed his own intentions toward appellant by announcing prior to trial that he would deal it a death-blow from which it would never recover (R. 274). He subsequently refused to recuse himself (R. 237) and rendered judgment against appellant in this case. Bias on the part of a trial judge has long been held to deny equal protection and due process. This question is before the court under Assignment of Error Number 7. *State ex rel. McFarren* v. *Justice Court*, 32 Wash. 2d 544, 202 P. 2d 927 (1949); *Ex Parte Wallace*, 24 Cal. App. 2d 933, 152 P. 2d 1 (1944); *Tumey* v. *Ohio*, 273 U. S. 510. The bias need not be pecuniary one, providing it is personal

and such as prevents the rendering of an impartial judgment. *Ex Parte Cornwell*, 144 Ala. 497, 39 So. 354 (1905). As was stated in *State ex rel. La Russa, et al.* v. *Hines*, 197 So. 762 (1940) at P. 763:

> The candidate for legislative or executive office is expected to announce his position on policies and issues and to stoutly advocate them but when a candidate for the judiciary does this, he disqualifies himself to sit in any cause affecting the issues he advocates.

The court particularly pointed out that prior to trial the judge had singled out the defendant and said he would convict him, and that it was contrary to reason to suppose the judge was unprejudiced under such circumstances.

Both the trial itself and the judgment entered lacked impartiality, and this denial of a fair hearing is a fundamental violation of the due process and equal protection clauses of the Fourteenth Amendment.

III

There is no state statute authorizing appellee to oust appellant from the state. Title 10, Sections 192, 193 and 194 Ala. Code, 1940, are mere venue and service of process provisions with respect to foreign corporations and can be made the basis for exclusion of a foreign corporation only if the provisions are found applicable to it and it continues to refuse to comply. *Pepperell Mfg. Co.* v. *Alabama National Bank*, 261 Ala. 665 (1954), *Gadden, Allen, Inc.* v. *Trans-Lux News Corp.*, 254 Ala. 665 (1930).

Presumably, equity would have the power to oust for illegal activities. However, the only possible illegal activity shown in this record would be the failure to register as a foreign corporation; this failure was the result of the good faith belief that the registration provisions applied

to business, not non-profit organizations. State officials did not know of any other non-profit foreign corporation which had been ousted because of failure to register (R. 693, 697, 700, 702, 704). The Court's ruling in refusing to permit this to be introduced into evidence was error and a denial of due process and equal protection as submitted under Assignment of Error Number 17. One non-profit corporation had been advised that Alabama law did not require such registration (R. 706-708). In spite of this, appellant had offered to register but this offer was refused. The judgment and decree in this case are contrary to the weight of the evidence, as was submitted under Assignment of Error Number 2. There is no basis in equity for an ouster under these facts.

Furthermore, the State is bound by the equitable rule regarding laches, since it is invoking the Court's equity jurisdiction.

In United States v. *Stinson*, 125 F. 907, 910 (7th Cir. 1903), affirmed 197 U. S. 200, the basic rule as to the application of equity to actions by the government was laid down.

> The government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable inquiry. The substantial considerations underlying the doctrine of estoppel apply to government as well as to individuals.

The doctrine of laches in particular was involved in many cases. In *United States* v. *Property on Pinto Island*, 74 F. Supp. 92 (S. D. Ala. 1947), involved estoppel against the State of Alabama for waiting 41 years before asserting claim to title of lands. Other Alabama cases include *State ex rel. Roberson* v. *The Town of Pell City*, 157 Ala. 380, 47 So. 246 (1908), and *Powell* v. *City of Birmingham*, 258

Ala. 159, 167; 61 So. 2d 11, 18 (1952). See also *State* v. *Ward*, 133 So. 2d 383 (Ala., 1961).

The Court spelled out the reasoning in these laches cases in *Brown* v. *Tuskegee Light & Power Co.*, 232 Ala. 361, 367, 368, 168 So. 165 (1936).

> In effectuating this elemental principle denying relief in equity which is not equitable, our Court, in common with prevailing authorities generally, applies the doctrine of estoppel in pais even against the state or its governing subdivision.

The Court in *Daniell* v. *Sherrill*, 48 So. 2d 736 (Fla. 1950), 23 A. L. R. 2d 1410, held at p. 739:

> . . . The State is the moving party it invoked the jurisdiction of a court of equity. The Sovereign, in such a situation is bound by the maxim, 'He who seeks equity must do equity,' to the same extent that any citizen would be bound.

State of Iowa v. *Carr*, 191 F. 257, 266 (8th Cir., 1911) stressed also the State's obligation under the rules of equity when the State itself seeks equity.

> But the great weight of authority, the stronger reasons and the settled rule upon this subject in the courts of the United States, is that, while mere delay does not, either by limitation or laches, of itself constitute a bar to suits and claims of a state or of the United States, yet, when a sovereignty submits itself to the jurisdiction of a court of equity and prays its aid, its claims and rights are judicable by every other principle and rule of equity applicable to the claims and rights of private parties under similar circumstances.

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The judgment and decree in favor of appellee in this case are contrary to law, as was submitted in Assignment of Error Number 3.

In the instant case, N.A.A.C.P. Branches had been in operation in Alabama since 1918 (R. 675) and had been rendering legal assistance to Negroes who sought vindication of their constitutional rights in Alabama since 1932. Its Southeast Regional Office in Birmingham was opened in April, 1951, and operated openly and continuously since that time (R. 35). Attorneys engaged by appellant had represented Alabama Negroes in litigation defended by the State. At no time did the State give notice to appellant that it had not complied with the law or that proceedings for ouster would be commenced because of its failure to register with the Secretary of State (R. 676). The Attorney General had recently been in correspondence with appellant and at no time called upon appellant to register (R. 676). The Court erred in denying the appellant's motion to dismiss, as was submitted in Assignment of Error Number 8.

Clearly, the facts of this case show that equity proceedings were unwarranted and were furthermore barred by laches. The judgment was therefore contrary to the evidence and in violation of the principles of equity and the case law. *Brown* v. *Tuskegee Power & Light Co. supra; United States* v. *Stinson, supra.* This question is before the court under Assignment of Error Number 4.

IV

A state has no absolute power to exclude a foreign corporation. *Southern Railway* v. *Greene*, 216 U. S. 400; *Freeman* v. *Hewitt*, 329 U. S. 249; *Simonetti Bros. Produce Co.* v. *Fox Brewing Co.*, 240 Ala. 91, 197 So. 38 (1940).

The theory of the power of exclusion originated in colonial times, when corporations were predominantly expansive trading companies, identified with the grant of

special privilege; monopoly, not legal personality, was their distinguishing feature. The thought and language of the monopoly period persisted in the early nineteenth century, and incorporation by special act of the legislature continued to be the practice. Changes brought about by an extraordinary increase of corporate activity, however, weighed heavily against the restrictive theory, and in 1809 recognition of rights of corporations to sue in courts of states other than the state of incorporation destroyed a first principle of restrictivism, the non-recognition of artificial personalities created by foreign sovereigns. *Bank of United States* v. *Deveraux*, 9 U. S. (5 Cranch.) 37 (1809). Today, incorporation has ceased to be a matter of special legislative grant, and it would now appear to be a denial of full faith and credit to the statute of a sister state to allow only domestic corporations to carry on a legal business. 89 Penna. Law Review 453, 454 (1941).

A series of cases struck down the theory of absolute right to exclude a corporation whose origin is in another state. *Freeman* v. *Hewitt*, 329 U. S. 249; *Butler Bros. Shoe Co.* v. *U. S. Rubber Co.*, 156 F. 1 (C. A. 8, 1907); *Crutcher* v. *Kentucky*, 141 U. S. 47. As was stated *in Crutcher*, referring to state regulations burdening interstate commerce, a corporation's right to operate interstate was one granted to every citizen of the United States, and incorporating within a state is a mere convenience of which the state cannot unreasonably deprive it.

It was held in *Terral* v. *Burke Construction Co.*, 257 U. S. 529: "... the sovereign power of a state in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the Supreme fundamental law." Therefore, the order and judgment of the Court restraining and enjoining appellant from operating or soliciting membership and contributions, and from filing to qualify to do business, are violative of the

First and Fourteenth Amendments, as submitted under Assignment of Error Number 12.

Other cases have developed the theory of exclusion as a deprivation of equal protection of the laws. In *Western Union Telegraph Co.* v. *Kansas ex rel. Coleman*, 216 U. S. 1, the Court emphasized that the organization involved was a public service corporation, and that the state could not require it to take out a license for carrying on its interstate operations. In *Southern Railway* v. *Greene*, 216 U. S. 400, the Court held that a corporation was a person within the equal protection clause of the Fourteenth Amendment, and that if the corporation has come into the state and acquired property, it must be treated equally with other corporations. The case of *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494, did not involve interstate commerce, nor a corporation having permanent and valuable property in the state; the Court held that since the corporation had built up good will and extensive records in the course of its business, it was a denial of equal protection to exclude it. The failure to enter judgment in appellant's favor, dismiss the complaint and allow appellant to register, is a denial of Fourteenth Amendment rights, as submitted under Assignment of Errors Number 22.

It is also a denial of equal protection to subject a foreign corporation to unconstitutional conditions in order to operate in the state. The state may not ask a corporation to give up its constitutional rights. *Williams* v. *Standard Oil Co.*, 278 U. S. 235; *Pullman Co.* v. *Kansas ex rel. Coleman*, 216 U. S. 56; *People ex rel. Hakanson* v. *Palmer*, 367 Ill. 513, 11 N. E. 2d 931 (1937); *Herndon* v. *Chicago, Rock Island and Pacific Ry. Co.*, 218 U. S. 135; *Harrison* v. *St. Louis & San Francisco Ry. Co.*, 232 U. S. 319; *Donald* v. *Phila. & Reading Coal & Iron Co.*, 241 U. S. 329.

Exclusion of a foreign corporation involves not only the equal protection clause but the due process clause as well.

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A corporation is now a person under the Fourteenth Amendment and entitled to due process of law. *Gulf, Colorado and Sante Fe R. R. Co.* v. *Ellis*, 165 U. S. 150, 154; *Liggett* v. *Baldridge*, 278 U. S. 105. The corporation would therefore be protected from any arbitrary state action and could not be punished under the state's power if the exercise of this power has no real and substantial relation to its supposed goal. *Liggett* v. *Baldridge*, supra. The failure to dismiss the restraining order in the instant case denied substantive due process, as was submitted under Assignment of Error Number 1.

The Court in *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, said at p. 513:

> . . . A state may not, under guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupation or impose unreasonable and unnecessary restrictions upon them. *Lawton* v. *Steele*, 152 U. S. 133, 137; *Meyer* v. *Nebraska*, 262 U. S. 390, 399.

The Court's decree enjoining appellant from filing to qualify to do business denies First and Fourteenth Amendment rights, as submitted under Assignment of Error Number 13.

Just as a natural person may not be prevented from pursuing a lawful occupation, *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, so a corporation may not be prevented from engaging in lawful occupation. *New State Ice Co.* v. *Liebmann*, 285 U. S. 262. Arbitrary expulsion from the state would violate the due process clause. The decree of ouster in this case was violative of the Fourteenth Amendment, as submitted under Assignment of Error Number 15.

The doctrine of exclusion was not applied to non-profit corporations, even before it became subject to legal limi-

tations. It arose because of the profit-making activities of commercial corporations, competing against domestic corporations. There can be on doubt that Alabama recognizes the difference between profit and non-profit corporations, since in regard to domestic corporations, non-profit corporations are treated under entirely different legal provisions (Alabama Non-Profit Corporations Act, Title 10, Sections 203-263, Ala. Code, 1940, as amended 1955) than profit or business corporations (Title 10, Sections 1-110, Ala. Code, 1940). Yet the state has attempted to subject appellant to the rules regarding foreign business corporations instead of granting it the same treatment as other non-profit foreign corporations (R. 706-708), and has attempted to oust it from the state. There was no adequate foundation in law or in fact for such a denial of due process, as submitted under Assignment of Error Number 19.

There was no evidence in the record of any illegality on appellant's part. The judgment of ouster under such circumstances was, as submitted under Assignment of Error Number 21, so harsh as to deny due process. The state read a number of telephone numbers called by a witness into the record without any adequate foundation (R. 1044-1047); the question of violation of privacy and First and Fourteenth Amendment rights involved in this is before the Court under Assignment of Error Number 18. The evidence in this case shows that the only action of appellant which was subject to question was its failure to register, which was in good faith (R. 162-1038; 1041-1043); the judgment was therefore contrary to the great preponderance of the evidence in the case, as submitted under Assignment of Error Number 14. In view of the fact that no other non-profit corporations had been so treated for mere failure to register, to the knowledge of state officials (R. 693, 697, 700, 702, 704), shows clearly that the judg-

ment is contrary to the overwhelming weight of the evidence and therefore a denial of Fourteenth Amendment rights. This question is before the Court under Assignment of Error Number 20.

V.

The evidence discloses that these proceedings are singular in that there is no showing that such proceedings had been taken against any similar foreign corporation since 1918. It is clear from the manner in which these proceedings were instituted, without notice to appellant, that state officials were attempting to misuse the law to oust appellant from the state purely because appellant's aims and objectives are at variance with views held by state officials. The question of denial of Fourteenth Amendment rights here involved is before the Court under Assignment of Error Number 10. As pointed out in Proposition Number 1, ante, racial discrimination of any kind is unlawful when imposed and enforced by governmental authorities whether in schools, *Brown* v. *Board of Education*, supra; recreational facilities, *Dawson* v. *Mayor*, supra; in public parks, *Holmes* v. *City of Atlanta*, supra; in intrastate commerce, *Gayle* v. *Browder*, supra; in interstate commerce, *Bailey* v. *Patterson*, supra; and in any and all kinds of public facilities.

The courts have consistently struck down state regulations and actions which in purpose and effect seek to impose discrimination. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Oyama* v. *California*, 332 U. S. 633; *Takahashi* v. *Fish & Game Commission*, 334 U. S. 410.

It is also clear that the state may not impose restrictions upon persons to prevent their advocating by lawful means the elimination of racial discrimination and segregation. *N.A.A.C.P.* v. *Alabama*, supra. What the state is here attempting to do is to prevent the appellant, and those who

work in concert with it, from taking lawful action in opposition to illegal state policy which seeks to perpetuate an unconstitutional pattern of segregation and discrimination, as submitted under Assignment of Error Number 16. In short, the state is using these proceedings to accomplish racial discrimination forbidden by the Fourteenth Amendment, and the judgment herein, in effect, constitutes a forbidden discrimination in violation of the Constitution of the United States. Cf. *Gomillion v. Lightfoot*, supra.

Under these circumstances, denial of appellant's motion for a rehearing was error, as submitted under Assignment of Error Number 23, and a deprivation of due process as guaranteed under the Fourteenth Amendment.

CONCLUSION

In conclusion, it is therefore most earnestly urged by Counsel for Appellant that in the light of the decisions above cited, and manifest error of the lower Court, this Court will reverse the case with such direction as justice and law may require.

APPENDIX C

Decree of Circuit Court of Montgomery, Alabama, December 29, 1961

This matter now comes on to be heard for final decree before the Court and is submitted by the respective parties upon the pleadings and proof as noted by the Register, and upon the note of submission filed this day.

The Court has heard this case in open Court for three days, Wednesday, December 27th, Thursday, December 28th and Friday, December 29th. During this time twenty witnesses for the respective parties have been examined orally before the Court. The examination and cross-examination of these witnesses has been careful and thorough.

Upon completion of the testimony, the Court did not fix any time limit for the argument and the case has this day been argued before the Court by counsel for the respective sides for several hours.

Now, upon consideration of only such testimony as is relevant, material, competent and legal to the issues presented by the pleadings in this case, the Court is of opinion that the allegations of complainant's bill, as last amended, have been proved by the overwhelming weight of the testimony; and the Court finds from this evidence, much of it admissions by the respondent itself, that the respondent has been and continues to do business in the State of Alabama in violation of the Constitution and laws of the state relating to foreign corporations and the Court is of the opinion, without going into detail at this time, that the allegations of the complainant's bill, as last amended, have been overwhelmingly proved by all of the credible testimony in the case.

The Court further finds from the evidence that said respondent's activities in this state have also been in violation of other laws of the State of Alabama and are and have been a usurpation and abuse of its corporate functions and detrimental to the State of Alabama; and now, upon consideration of the record in this case, including all of

the pleadings and all of the testimony taken orally before the Court, it is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the respondent, National Association for the Advancement of Colored People, a corporation, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, National Association for the Advancement of Colored People, a corporation, be, and they hereby are, permanently restrained and enjoined from:

1. Conducting any further business of any description or kind of respondent within the State of Alabama; organizing further chapters of respondent within the State of Alabama; maintaining any office of respondent within the State of Alabama.

2. Soliciting membership in respondent corporation or any local chapters or subdivisions or wholly controlled subsidiaries within the State of Alabama.

3. Soliciting contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

4. Collecting membership dues or contributions for respondent or local chapters or subdivisions or wholly controlled subsidiaries thereof within the State of Alabama.

5. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama.

It is, further ORDERED, ADJUDGED AND DECREED by the Court that the respondent, National Association for the Advancement of Colored People, a corporation, its agents,

servants, employees, attorneys, and all officers thereof, and all persons in active concert or participation with the respondent, be and they hereby are permanently restrained and enjoined as to intra-state activities and business of this kind only, and is hereby ousted from organizing or controlling branches of respondent in this state, and from exercising any of its corporate functions in the State of Alabama, except such as may be protected by the Interstate Commerce Clause of the Constitution of the United States.

The Court, in view of the above ruling, is of opinion that it is not necessary that the temporary injunction issued June 1, 1956 be continued in force and effect, and the same is hereby dissolved as of this date.

The Court notes that the United States Court of Appeals for the Fifth Circuit did on December 11th, 1961, in compliance with the mandate of the United States Supreme Court, remand the proceedings in the case of the National Association for the Advancement of Colored People, appellant, versus MacDonald Gallion, Attorney General of the State of Alabama, et al., appellee, to the United States District Court with directions to proceed with the trial of the issues in the action unless within a reasonable time, not later than January 2nd, 1962, the State of Alabama shall have accorded to the National Association for the Advancement of Colored People, a corporation, an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956 and upon the merits of the action in which such order was issued. Without this directive of the Supreme Court of the United States, a ruling which lacks that comity usually existing between state and federal courts, this Court would now go into a full discussion of all the issues involved in this case. This directive of the United States Supreme Court

prevents this State Court at this time from writing a full opinion in the case; and this Court does now reserve the right at a future date to state in an opinion its full and complete findings of fact and its rulings on the law in this case, with appropriate citations of authorities. It is,

ORDERED, ADJUDGED AND DECREED further by the Court that the costs in this cause, to be taxed by the Register of this Court, be paid by the respondent, for which let execution issue.

DONE, this the 29th day of December, 1961.

WALTER B. JONES.

APPENDIX D

Motion for Hearing on the Merits in the United States District Court for the Middle District of Alabama Northern Division

Now comes your petitioner, the National Association for the Advancement of Colored People, plaintiff in the above-entitled cause, and respectfully moves this Court to set this cause down for a hearing on the merits.

1. On November 29, 1962, plaintiff herein filed a Motion for Hearing on the Merits on the grounds that no hearing had been set in the Supreme Court of Alabama. Prior to the hearing on that motion, plaintiff was notified that a hearing had been set in the Supreme Court of Alabama. Petitioner then asked that its motion be withdrawn without prejudice.

2. On or about December 18, 1962, plaintiff argued the appeal from the judgment of the Circuit Court of Montgomery County before the Supreme Court of Alabama. Its brief had been filed in the Supreme Court of Alabama in April of 1962, and was filed in accordance with the Revised Rules of the Supreme Court of Alabama, 1955, Rule 9, which reads as follows:

> Rule 9. (10). Appellant's Brief: How Prepared:
>
> Appellant's brief under separate headings shall contain: (a) under the heading "Statement of the Case," a concise statement of so much of the record as fully presents every error and exception relied upon referring to the pages of the transcript; (b) under the heading "Statement of the Facts," a condensed recital of the evidence in narrative form so as to present the substance clearly and concisely, referring to the pages of the transcript, and if the insufficiency of the evidence to sustain the verdict or finding, in fact or law, is assigned, then the statement shall contain a condensed recital of the evi-

dence given by each witness in narrative form bearing on the points in issue so as to fully present the substance of the testimony of the witness clearly and concisely; (c) under the heading "Propositions of Law," a concise statement, without argument, of each rule or proposition of law relied upon to sustain the errors assigned, together with the authorities relied upon in support of each, and in citing cases, the names of parties must be given, with the book and page where reported; (d) argument with respect to errors assigned which counsel desire to insist upon. Assignments of error not substantially argued in brief will be deemed waived and will not be considered by the court. The statements made by appellant under the headings "Statement of the Case" and "Statement of the Facts" will be taken to be accurate and sufficient for decision, unless the opposite party in his brief shall make the necessary corrections or additions.

The transcript of the record and the Assignment of Errors were also filed in accordance with the rules of that court.

3. At no time, prior to or during the hearing before the Supreme Court of Alabama, was there any statement from the court or counsel that the brief or appeal was jurisdictionally defective.

4. On February 28, 1963, the Supreme Court of Alabama rendered a decision[1] affirming the judgment below on procedural grounds without reaching the merits. Its basic rationalization for this course is that plaintiff failed to properly argue its Assignments of Error.

---

[1] Attached hereto as the Appendix.

Motion for Hearing on the Merits in the United States District Court for the Middle District of Alabama Northern Division

5. In view of the mandate of the Supreme Court of the United States on October 23, 1961, "to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued" and "authorization to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action," plaintiff respectfully submits that this Court is now obligated to take jurisdiction of this matter and render a decision on the merits. The decision of the Supreme Court of Alabama is in complete defiance of the conditions set by the Supreme Court of the United States for withholding jurisdiction of the federal courts.

WHEREFORE, it is respectfully urged and moved that this Court take jurisdiction of this cause and set this matter down for an early hearing and proceed to decide this case on the merits.

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Attorneys for Plaintiff.
By .....

Dated: April 1, 1963.

APPENDIX E

Denial of Motion for Hearing on Merits

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
Northern Division
April 30, 1963

There is now presented to this Court a motion of the plaintiff, National Association for the Advancement of Colored People, a Corporation, filed herein on March 29, 1963, wherein said plaintiff seeks to have this Court set this matter for a hearing on the merits.

This case has been pending in this Court since June 23, 1960. It is an action by the National Association for the Advancement of Colored People seeking to invoke the jurisdiction of this Court on the ground that the plaintiff corporation has a right in this Court to redress certain alleged deprivations under color of law of the State of Alabama of the right and privilege secured to said corporation and/or its members by the Constitution of the United States and/or Acts of Congress providing for the equal rights of citizens. Plaintiff seeks, in its action, to have this Court enjoin and restrain the defendant Richmond M. Flowers as Attorney General of the State of Alabama and his agents, etc., and enjoin and restrain Agnes Baggett as Secretary of State of the State of Alabama and her agents, etc., from refusing to register the plaintiff corporation, said refusal action being pursuant to a temporary injunction which was issued by one of the Circuit Judges of the Fifteenth Judicial Circuit for the State of Alabama.[1]

[1] The case was originally against MacDonald Gallion as Attorney General and Mrs. Bettye Frink as Secretary of State. This Court, acting pursuant to the provisions of Rule 25(d), Federal Rules of Civil Procedure, by order made and entered herein on April 5, 1963, substituted Flowers and Baggett, the present incumbents of the offices as designated, for those individuals originally named as defendants in their official capacities.

Denial of Motion for Hearing on Merits

On August 11, 1960, this Court by memorandum opinion, 190 F. Supp. 583, set out in detail the history of this litigation in both the State and Federal courts and declined to exercise jurisdiction in this case, observing that because of the peculiar history of this case the matter should be litigated through the State court system and, if necessary, from there to the Supreme Court of the United States. From this action, the National Association for the Advancement of Colored People a Corporation, appealed to the United States Court of Appeals for the Fifth Circuit. That Court in *National Association for the Advancement of Colored People* v. *Gallion* (1961), 290 F. 2d 337, vacated the order of this Court to the extent that the action was dismissed, but stated:

> "We are in agreement with the district court's decision that this matter should be litigated initially in the courts of the State. But for the reasons here set forth, the judgment will be vacated and the case remanded to the district court with instructions to permit the issues presented to be determined with expedition in the State courts, retaining jurisdiction meanwhile for the purposes here stated."

From the action of the United States Court of Appeals for the Fifth Circuit, the National Association for the Advancement of Colored People, a Corporation, appealed to the Supreme Court of the United States. That Court in *National Association for the Advancement of Colored People* v. *Gallion, Attorney General of Alabama, et al.* (Oct. 23, 1961), 368 U. S. 16, vacated the action of the Court of Appeals for the Fifth Circuit and remanded the matter to said Court, stating:

> "The petition for a writ of certiorari is granted. The judgment below is vacated, and the case is remanded to the Court of Appeals with instructions

Denial of Motion for Hearing on Merits

to direct the District Court to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued. Pending the final determination of all proceedings in the state action, the District Court is authorized to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action. *Truax* v. *Corrigan*, 257 U. S. 312, 331-334."

On December 13, 1961, this Court, acting pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit that was filed herein on December 11, 1961 (which mandate was, in accordance with the order and instructions of the Supreme Court of the United States, supra), ordered this cause to be reinstated on the active docket of this Court "for such further action as may be considered appropriate and necessary to assure prompt disposition of all issues involved in this case." This Court, in order to keep informed as to the exact status of the matter in the courts of the State of Alabama, ordered and directed that the plaintiff and the defendants each advise this Court in writing on or before the 30th day of each month, commencing January 30, 1962, as to the exact status of said proceeding in the State courts. That part of this Court's order has been complied with by the parties, and the said status reports are on file in this action with the Clerk of this Court. Acting within the time prescribed and as required by the Federal courts, the Circuit Court of Montgomery County, Alabama, for three days, on December 27th, 28th and 29th, 1961, heard the matter on its merits.

Denial of Motion for Hearing on Merits

A final decree was rendered by the Circuit Court of Montgomery County, Alabama, in said cause on December 29, 1961, said decree being adverse to the National Association for the Advancement of Colored People, a Corporation, to the extent that said corporation, "its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with respondent, National Association for the Advancement of Colored People, a corporation, be, and they hereby are, permanently restrained and enjoined" from conducting business of any description, maintaining any office, soliciting membership, collecting dues or contributions, and filing an application "for the purpose of qualifying to do business within the State of Alabama."

The National Association for the Advancement of Colored People, a Corporation, duly and timely appealed to the Supreme Court of Alabama from the action of the Circuit Court of Montgomery County, Alabama. The records of this Court reflect that the case as appealed was submitted to the Supreme Court of Alabama at the first regular call of the Third Division (the division that includes Montgomery County), this submission being in December 1962 and this call for this division by the Supreme Court of Alabama being fixed by law and being the first call for the Third Division after the briefs were filed.[2]

On February 28, 1963, in *National Association for the Advancement of Colored People, a Corporation*, v. *State of Alabama*, 3 Div. 996, — Ala. —, 150 So. 2d 677, the Supreme Court of Alabama rendered its decision wherein it "affirmed" the decree of the Circuit Court of Montgomery County, Alabama, permanently enjoining and restraining said association from conducting business in the State of Alabama. The basis for the motion for a hearing on the merits now presented to this Court is that ". . .

---

[2] Title 13, § 22, Code of Alabama, Recompiled 1958.

this Court is now obligated to take jurisdiction of this matter and render a decision on the merits," since the Supreme Court for the State of Alabama, instead of considering the merits of the case, affirmed the action of the Circuit Court of Montgomery County, Alabama, for the failure of the National Association for the Advancement of Colored People, a Corporation, to comply with Alabama Supreme Court Rule No. 9. This rule has to do with the assignment of error and the arguments of said assignments in the brief as presented to the Supreme Court. As this Court understands the matter, there is no contention on the part of the plaintiff association that the courts for the State of Alabama have not expeditiously handled the case since the action of the Federal appellate courts and the order of this Court of December 13, 1961. In this connection, it is significant to note that the plaintiff association did not, as authorized by Rule 47, as amended, Supreme Court of Alabama (263 Ala. XXII), request the Supreme Court of Alabama to expedite the submission of the case while the appeal from the Circuit Court of Montgomery County, Alabama, was pending before the Supreme Court. What the plaintiff association is now saying and the basis on which it seeks to have this Court grant a hearing on the merits of the matter is that "[t]he trivialities raised by the Supreme Court of Alabama to bar dealing with this case on the merits and its refusal to follow precedents in its own law is, in view of the long protracted nature of this litigation, a clear denial of due process."

As this Court understands the Supreme Court of the United States in its order and directive as set out in *National Association for the Advancement of Colored People v. Gallion, etc., et al., supra*, this Court was to proceed with the trial of the issues ". . . unless within a reasonable time . . . the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order . . ." The Supreme Court

further stated that "[p]ending the final determination of all proceedings in the state action . . ." this Court was authorized to retain jurisdiction and to take such steps as were necessary and appropriate to assure a prompt disposition in the State court action; that has been and continues to be done. As this Court understands the matter, the Supreme Court of the United States and the Fifth Circuit in its mandate made and entered herein on December 11, 1961, have not ordered and directed this Court to grant the National Association for the Advancement of Colored People, a Corporation, a hearing on the merits if and when it received an adverse ruling in the State courts. The Supreme Court of the United States has, in the exercise of its jurisdiction over the Supreme Court of the State of Alabama, been available to the National Association for the Advancement of Colored People, a Corporation, regularly during the history of this litigation.[3] The plaintiff association, as it has had throughout the course of this litigation in both Federal and State courts, continues to have the right to obtain rulings and reviews from the Supreme Court of the United States of decisions relating to the constitutional issues presented in this litigation. To put it as succinctly as possible, this Court does not now feel that the action of the Supreme Court of Alabama in its ruling affirming the granting of the injunction by the Circuit Court of Montgomery County, Alabama, said ruling being based upon noncompliance by the plaintiff association with the rules of that Court, requires or even justifies this Court's granting the plaintiff association a hearing on the merits of this matter. Such action by this Court, if taken, would in effect constitute a review of the action of the Supreme Court of Alabama in its interpretation of its rules, which plaintiff

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[3] *National Association for the Advancement of Colored People* v. *Alabama* (1958), 357 U. S. 449; *National Association for the Advancement of Colored People* v. *Alabama*, 360 U. S. 240.

says was a "clear denial of due process." The Supreme Court of the United States is the proper Court to review this action by the Supreme Court of Alabama. This Court is informed that such a review is presently being sought by the plaintiff association.

For the foregoing reasons and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the motion of the National Association for the Advancement of Colored People, a Corporation, filed herein on March 29, 1963, seeking to have this Court conduct a hearing on the merits of this matter, be and the same is hereby denied.

Done, this the 30th day of April, 1963.

FRANK M. JOHNSON, JR.,
United States District Judge.

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FILED
JUN 22 1963
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1962

NO. 169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation

Petitioner

v.

STATE OF ALABAMA ex rel. RICHMOND M. FLOWERS
Attorney General of the State of Alabama

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE STATE OF ALABAMA IN OPPOSITION

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Attorney General
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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1962

NO. 1141

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a corporation
Petitioner

v.

STATE OF ALABAMA ex rel. RICHMOND M. FLOWERS
Attorney General of the State of Alabama
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR THE STATE OF ALABAMA IN OPPOSITION

STATEMENT OF THE CASE

On June 1, 1956, the State of Alabama, on the relation of the Attorney General of the State of Alabama, filed a suit against the National Association for the Advancement of Colored People, a New York Corporation, in the Circuit Court of Montgomery County, Alabama, in Equity.

The suit prayed for a temporary and permanent injunction restraining the said corporation from doing intrastate business in the State of Alabama and for an order on final hearing ousting petitioner corporation from organizing or controlling any chapters of petitioner in Alabama and from exercising any of its corporate functions in the State of Alabama.

The temporary injunction was granted, and during its pendency, certain contempt proceedings were instituted against petitioner, not pertinent here except for historical

purposes. The litigation with reference thereto may be found in 265 Ala. 356; 268 Ala. 531; 268 Ala. 504; 271 Ala. 33, 122 So.2d 396; 353 U.S. 972; 357 U.S. 449; and 360 U.S. 240.

BASIS FOR SUIT

For many years pertitioner has been doing business in the State of Alabama as a foreign corporation without complying with the Constitution and laws of this State as set forth in Sections 192, 193, and 194 of Title 10, Code of Alabama 1940, and Article 12, Section 232, Constitution of Alabama 1901.

It was alleged that it has been engaging in business and activities not permitted by its Charter or Articles of Incorporation; has furnished money, moral and legal support of an illegal boycott; has criticized and maligned the courts of this State; has falsely charged criminal collusion against the trustees and officers of the University of Alabama; has ignored the orders of the State courts; and generally has pursued a course of conduct in Alabama, which necessitated its ouster.

FEDERAL COURT SUIT

A suit was filed by petitioner in the Federal District Court, Montgomery, Alabama, seeking to have that court adjudicate the merits of this present action and to restrain the State Circuit Court from further proceeding with it. It was claimed that state courts would not grant a hearing on the merits. This relief was denied, but the State Court in effect was ordered by this Court to try the merits of the action and the motion to dissolve the temporary injunction by January 2, 1962. The memorandum opinion of the Supreme Court of the United States is reported in 7

L.Ed.2d, No. 1 Advance Sheet, page 85, 30 L.W. 3130, and is as follows:

> "October 23, 1961. Per Curiam: The Petition for Writ of Certiorari is granted. The judgment below is vacated, and the case is remanded to the Court of Appeals with instructions to direct the District Court to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued. Pending the final determination of all proceedings in the state action, the District Court is authorized to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action. Truax v. Corrigan, 257 US 312, 331-334, 66 L.ed 254, 262, 263, 42 S.Ct. 124, 27 ALR 375.
>
> "Mr. Justice Stewart took no part in the consideration or decision of this case."

Starting on December 27, 1961, and ending December 29, 1961, the said Circuit Court did try the issues directed to be tried by the Supreme Court of the United States, and on final hearing dissolved the temporary injunction, but issued a permanent injunction against petitioner, its agents, servants, etc., enjoining and restraining them from conducting intrastate business and activities of any kind and ousting petitioner from the State of Alabama. The decree of the court was entered on December 29, 1961. Petitioner appealed from this decree to the Supreme Court of Alabama.

THE APPEAL TO THE SUPREME COURT OF ALABAMA

The appeal was taken January 22, 1962. The case was briefed and argued orally before the Supreme Court of Alabama on December 18, 1962.

On February 28, 1963, the Supreme Court of Alabama affirmed the judgment of the Circuit Court of Montgomery County, Alabama, rendered December 29, 1961. ____Ala.____, 150 So.2d 677.

The appeal required an affirmance of the decree of the lower court without a consideration of the merits of the case.

Petitioner's brief in the "Argument" section did not comply with Supreme Court Rule 9 of the Alabama Supreme Court. Title 7, Appendix, page 1159, Code of Alabama Recompiled 1958.

Said Rule 9 is as follows:

> "Appellant's brief under separate headings shall contain: (a) under the heading "Statement of the Case," a concise statement of so much of the record as fully presents every error and exception relied upon referring to the pages of the transcript; (b) under the heading "Statement of the Facts," a condensed recital of the evidence in narrative form so as to present the substance clearly and concisely, referring to the pages of the transcript, and if the insufficiency of the evidence to sustain the verdict or finding, in fact or law, is assigned, then the statement shall contain a condensed recital of the evidence given by each witness in narrative form bearing on the points in issue so as to fully present the substance of the testimony of the witness

clearly and concisely; (c) under the heading "Propositions of Law," a concise statement, without argument, of each rule or proposition of law relied upon to sustain the errors assigned, together with the authorities relied upon in support of each, and in citing cases, the names of parties must be given, with the book and page where reported; (d) arguments with respect to errors assigned which counsel desire to insist upon. Assignments of error not substantially argued in brief will be deemed waived and will not be considered by the court. The statements made by appellant under the headings "Statement of the Case" and "Statement of the Facts" will be taken to be accurate and sufficient for decision, unless the opposite party in his brief shall make the necessary corrections or additions."

The Supreme Court of Alabama also has a rule of long standing and frequent application that where unrelated assignments of error are argued together and one is without merit, the others will not be considered.

QUESTION PRESENTED

Is a Federal question presented to this Court where a lower court decree is affirmed by a state supreme court, without reaching the merits, by reason of failure of petitioner to comply with that court's reasonable rules and practices in the preparation of its brief?

ARGUMENT

The District Court was ordered by this Court to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State

of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the State restraining order of June 1, 1956, and upon the merits of the action in which such order was issued.

The above order has been fully complied with by the State of Alabama. A trial on the merits was given in the lower State court and a reasonable opportunity afforded petitioner to present its alleged rights in the Supreme Court of Alabama.

It is through petitioner's own fault that the rules and practices of the Supreme Court of Alabama have not been complied with.

There has been no unreasonable application of the practice and procedure of the Supreme Court of Alabama, and no Federal question is now presented over which this Court has jurisdiction. *Davis v. Wechsler*, 263 U.S. 22, 24; *Washington v. Miller*, 235 U.S. 422; *Michel v. Louisiana*, 350 U.S. 91; *Central Union v. Edwardsville*, 269 U.S. 190; *Parker v. People of State of Illinois*, 333 U.S. 571; *Hiawassee River Power Co. v. Carolina Tennessee Power Co.*, 252 U.S. 341.

Federal courts have rules similar to said Rule 9, and failure to comply warrants either dismissal or affirmance of an appeal. *Butler v. United States*, 108 Fed.2d 27; *Fleming v. Musingwear*, 162 Fed.2d 125; *Matheuson et al. v. First Trust Co. of St. Joseph, Mo.*, 100 Fed.2d 121, cert. den. 306 U.S. 633; *American Ins. Co. v. Scheufler*, 129 Fed.2d 143, cert. den. 317 U.S. 687; *The Catherine v. The United States*, 11 U.S. 99; *Portland Co. v. United States*, 82 U.S. 1.

In *Portland* this Court dismissed an appeal for counsel's failure to follow the 21st rule of the Court in making up his brief. The 21st rule is much like Rule 9 here involved.

It may be in order to point out here that the questions and issues involved in the court below made necessary the determination of state matters only. Whether or not a foreign corporation is doing business in a state contrary to state constitutional and statutory law is a state court matter and does not involve a Federal question. *Erie R. Co. v. Thompkins*, 304 U.S. 64; *State ex rel Griffith v. Knights of Ku Klux Klan*, 117 Kan. 564, 232 P. 254. This latter case was dismissed on appeal by this Court for want of a Federal question. 47 S.Ct. 458, 71 L.Ed. 829.

Petitioner has had full opportunity to be heard in the courts of Alabama and now presents nothing of a Federal nature for review. *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287; *Market Street R. Co. v. Railroad Comm. of California*, 324 U.S. 548.

The mere averment of a constitutional question will not suffice unless in reality there is one presented. *O'Callaghan v. O'Brien*, 199 U.S. 89; *Norton v. Whiteside*, 239 U.S. 144.

The petition for writ of certiorari should be denied.

Respectfully submitted.

Richmond M. Flowers
Attorney General
State of Alabama

Gordon Madison
Assistant Attorney General
State of Alabama
Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Gordon Madison, as Assistant Attorney General of the State of Alabama, one of the attorneys for the respondent herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of June, 1963, I served a copy of the foregoing Brief in Opposition to the Petition for Writ of Certiorari on Robert L. Carter, Esq., 20 West 40th Street, New York 18, New York; Maria L. Marcus, 20 West 40th Street, New York 18, New York; Fred D. Gray, Esq., 34 North Perry Street, Montgomery, Alabama, Arthur D. Shores, Esq., 1527 Fifth Ave. North, Birmingham, Alabama, attorneys of record for petitioner, by mailing copies in duly addressed envelopes with first-class postage prepaid, and airmail where required.

Gordon Madison
Assistant Attorney General
State of Alabama

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IN THE

Supreme Court of the United States

October Term, 1963

No. 169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation,
Petitioner,

v.

STATE OF ALABAMA, EX REL.
RICHMOND M. FLOWERS, Attorney General.

BRIEF FOR PETITIONER

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Cases Cited

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Powell v. City of Birmingham, 258 Ala. 159, 167, 61 So. 2d 11, 18 (1952) 20
Pullman Co. v. Kansas, 216 U. S. 56, 63 25

Quinn v. Hannow, 80 So. 2d 239 (1955) 30

Reeves v. Alabama, 348 U. S. 891 19

Schware v. Board of Bar Examiners, 353 U. S. 232 24
Shelby County v. Baker, 269 Ala. 111, 110 So. 2d 896 (1959) 29
Shelton v. Tucker, 364 U. S. 479 ..... 15, 27, 28
Simmons v. Cochran, 252 Ala. 461, 41 So. 2d 579, 580 (1949) 30

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Simonetti Bros. Produce Co. v. Peter Fox Brewing Co., 240 Ala. 91, 197 So. 38 (1940) 24
Smyth v. Ames, 169 U. S. 466 24
Societe Internationale v. Rogers, 357 U. S. 197, 209, 210 32
Southern Railway v. Greene, 216 U. S. 400 24
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State v. Farabee, 268 Ala. 437, 108 So. 2d 148 (1959) 30
State ex rel Crossland v. Omaha & C. B. Ry., 91 Iowa 517, 60 N. W. 121 (1894) 23
State ex rel Roberson v. Town of Pell City, 157 Ala. 380, 47 So. 246 (1908) 20
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Sweatt v. Painter, 339 U. S. 629 34

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Thompson v. State, 267 Ala. 22, 99 So. 2d 198, 200 (1957) 29

United States v. Property on Pinto Island, 74 F. Supp. 92 (S. D. Ala. 1947) 20
United States v. Stinson, 125 Fed. 907, 910 (7th Cir. 1903), aff'd, 197 U. S. 200 19

Warren Co. v. Exodus, 114 App. 563, 53 N. E. 2d 546 22n
Watson v. Memphis, 373 U. S. 526, 533 34
Western Union Telegraph Co. v. Kansas ex rel Coleman, 216 U. S. 1 24
Williams v. Standard Oil Co. of Louisiana, 278 U. S. 235 25
Wood v. Wood, 82 So. 2d 556 (1955) 30
Wright v. Georgia, 373 U. S. 284 ..... 15, 30, 31, 32

Statutes Cited

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Alabama, Title 10, Code of Alabama (1959):
- Section 21(90) 2, 7, 18, 20
- Section 21(91) 3, 7, 18, 20
- Section 21(92) 3, 7, 18, 20
- Section 21(93) 3, 7, 18, 20
- Section 21(94) 4, 7, 18, 20
- Section 21(95) 4
- Section 21(96) 4

Arizona, Constitution, Art. 14:
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California, Corp. Code, (as amended, 1959):
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- Section 6408 ..... 20n

Idaho, Gen. Laws Ann. (1947):
- Section 30-501 (as amended, 1955) 20n
- Section 30-508 ..... 20n
- Section 30-509 ..... 20n
- Section 30-510 ..... 21n

Indiana, Ann. Statutes (1960):
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Iowa, Code Ann. (1949):
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Massachusetts, Gen. Laws Ann. (1955):
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Nevada, Rev. Stat. (Supp., 1959):
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- Section 80.170 ..... 22n

New Hampshire, Rev. Stat. Ann. (1955):
- Section 300:7 ..... 22n

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New Jersey, Stat. Ann. (1937):
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Section 14:15-6 ..... 21n

New York, Gen. Corp. Law (1963):
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North Dakota, Century Code Ann. (1960):
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Ohio, Rev. Code Ann.:
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Rhode Island, Gen. Laws Ann. (1956):
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Section 7-2-28 ..... 21n

Texas, Civ. Stat. Ann (1955):
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Article 8.18 ..... 21n

Vermont, Stat. Ann. (1958):
Title 11, Section 861 ..... 22n
Title 11, Section 862 ..... 22n

Virginia, Code Ann. (1950):
Section 13.1-102 (as amended, 1956) 21n
Section 13.1-119 (as amended, 1956) 21n

Wyoming, Stat. Ann. (1957):
Section 17-36.95 (as amended, 1961) 21n
Section 17-36.113 (as amended, 1961) 21n

IN THE

Supreme Court of the United States

October Term, 1963

No. 169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation,
Petitioner,

v.

STATE OF ALABAMA, EX REL. RICHMOND M. FLOWERS, Attorney General.

BRIEF FOR PETITIONER

The Opinion Below

The opinion of the Supreme Court of Alabama (R. 221-229), affirming the judgment of the Circuit Court of Montgomery County, Alabama (R. 209-212), is reported at 150 So. 2d 677.

Jurisdiction

The judgment of the Supreme Court of Alabama was entered on February 28, 1963 (R. 220). Petition for writ of certiorari was filed on May 29, 1963, and was granted on October 14, 1963.

Question Presented

Whether the record of these proceedings discloses that petitioner, its members, prospective members and contributors have been denied rights of due process, equal protection of the laws, freedom of expression and freedom of

association, secured and guaranteed under the Fourteenth Amendment to the Constitution of the United States against state intrusion, and provides the basis for affirmative relief by this Court to insure to petitioner and its members the full enjoyment of the aforesaid rights denied by the courts below.

Statutory Provisions Involved

Title 10, Code of Alabama, 1959, as amended:

§ 21(90). *Foreign corporation must file articles of association, etc., and instrument designating process agent and place of business.*—Every foreign corporation shall, before engaging in or transacting any business in this state, file with the secretary of state a certified copy of its articles of incorporation or association, together with such other information as may be required by the secretary of state, and file an instrument of writing, under the seal of the corporation and signed officially by the chairman of the board, president or executive vice-president and the treasurer or secretary or the officer holding the authority and exercising the duties of secretary, thereof, designating at least one known place of business in this state and an authorized agent or agents residing thereat, and pay all fees and taxes and make all tax returns required by law; and when any such corporation shall amend its articles of incorporation, it shall within ten days thereafter file a certified copy of such amendment; or if such corporation shall abandon or change its place of business as designated in such instrument theretofore filed with the secretary of state, or shall substitute another agent or agents for the agent or agents designated in such instrument of writing, such corporation shall file a new instrument of writing setting forth such change before transacting any

further business in this state. (1959, p. 1099, § 90, appvd. Nov. 13, 1959.)

§ 21(91). *Where filed and fee for filing.*—Such instrument when filed by a foreign corporation engaged in any business of insurance must be filed in the office of the superintendent of insurance, and when filed by a foreign corporation engaged in any other business than that of insurance must be filed in the office of the secretary of state, and there shall be paid at the same time for filing such instrument to the officer with whom the same is filed the sum of ten dollars for the use of the state. (1959, p. 1099, § 91, appvd. Nov. 13, 1959.)

§ 21(92). *Unlawful to transact business in state before sections* 21(90) *and* 21(92) *complied with; penalty.*—It is unlawful for any foreign corporation to engage in or transact any business in this state before complying with provisions of the two preceding sections; and any such corporation that engages in or transacts any business in this state without complying with the provisions of the two preceding sections shall, for each offense, forfeit and pay to the state the sum of one thousand dollars. (1959, p. 1100, § 92, appvd. Nov. 13, 1959.)

§ 21(93). *Unlawful to act as agent of foreign corporation before such instrument is filed; penalty.*—It is unlawful for any person to act as agent or transact any business, directly or indirectly, in this state, for or on behalf of any foreign corporation which has not designated a known place of business in this state and an authorized agent or agents residing thereat, as required in this chapter; and any person so doing shall, for each offense, forfeit and pay to the state the sum of five hundred dollars. (1959, p. 1100, § 93, appvd. Nov. 13, 1959.)

§ 21(94). *Foreign corporations, their agents, officers, etc., contracting or doing business in state without license, penalty for.*—Any foreign corporation or any person acting as agent, servant, or officer of such foreign corporation who shall make or attempt to make any contract, agreement, undertaking, or engagement with, by, or in the name of or for the use or benefit of any such corporation without a license authorizing such corporation to do business in this state, or after such license shall have been cancelled, shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than one hundred dollars, nor more than one thousand dollars and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than twelve months, one or both, at the discretion of the jury trying the case. (1959, p. 1100, § 94, appvd. Nov. 13, 1959.)

§ 21(95). *Solictor must enforce penalties; commissions.*—Every penalty provided for under sections 21(92) through 21(94) of this title shall be sued for and recovered in the name of the state of Alabama by the solicitor of the circuit or county in which the offense is committed; and when collected, must be paid by the solicitor into the state treasury for the use of the state. (1959, p. 1100, § 95, appvd. Nov. 13, 1959.)

§ 21(96). *Exceptions.*—The provisions of sections 21(89) through 21(95) do not apply to corporations organized under the laws of the United States; nor to corporations engaging in or transacting business of interstate commerce only within this state. (1959, p. 1100, § 96, appvd. Nov. 13, 1959.)

Statement

1. Summary History of The Proceedings in This Cause.

This case began on June 1, 1956, with the filing of a complaint by the Attorney General (R. 1-4) and issuance *ex parte* of a temporary restraining order and injunction barring petitioner from engaging in any activities in Alabama and prohibiting compliance with the state law, supposedly violated, requiring foreign corporations to register with the Secretary of State (R. 5-6). Petitioner filed a motion to dissolve the injunction and an answer to the state's complaint (R. 6-14). Before hearing on petitioner's motion, the trial court entered an interlocutory order requiring petitioner to disclose the names and addresses of its members. Upon its refusal to comply, petitioner was adjudged in contempt. In June, 1958, on review here, the contempt adjudication was reversed. *NAACP* v. *Alabama*, 357 U. S. 449.[1]

Upon remand, the Supreme Court of Alabama again affirmed the contempt adjudication upon the grounds that petitioner had failed to comply with provisions of the interlocutory order other than those requiring the disclosure of the names of its members, 109 S. 2d 138 (1959). In June, 1959, the cause was again reviewed here, and it was held that the case had been argued, briefed and disposed of by the parties on the grounds that except for the membership list, petitioner had satisfactorily complied with the order below (360 U. S. 240). The Court said at pages 243, 244:

> We take it from the record before us that the Supreme Court of Alabama evidently was not acquainted with the detailed basis of the proceedings here and the consequent ground for our defined disposition. * * * . . .

[1] While the case was under consideration by this Court, the state instituted further contempt proceedings against petitioner in April, 1958. That trial was never brought to a final conclusion.

> . . . We assume that the State Supreme Court, thus advised, will not fail to proceed promptly with the disposition of the matters left open under our mandate for further proceedings, 357 U. S. at 467. . . .

On remand, the Supreme Court of Alabama, however, persisted in its refusal or failure to act upon the mandate of this Court. After months of unsuccessfully attempting to obtain a hearing on the merits in the state courts, petitioner, on June 27, 1960, instituted proceedings in the United States District Court for the Middle District of Alabama seeking to test in that court the validity of its ouster from the state. That phase of these proceedings eventually was brought here, and on October 23, 1961, this Court ordered the federal district court to retain jurisdiction of this cause and to proceed "with a trial of the issues in this action," unless no later than January 2, 1962, the state had accorded petitioner a hearing on its motion to dissolve the June 1, 1956, injunction and upon the merits of the action in which such order was issued.

On December 27-29, 1961, a hearing on the merits took place in the Circuit Court of Montgomery County. On December 29, at the close of that hearing, the court issued a final decree which in effect made the 5½-year old "temporary" restraining order and injunction permanent (R. 209-212). The court reserved "the right at a future date to state in an opinion its full and complete findings of fact and its rulings on the law in this case, with appropriate citations of authorities" (R. 212). This right, however, was never exercised.

An appeal was taken to the Supreme Court of Alabama (R. 217) and argued there on December 18, 1962 (R. 219). On February 28, 1963, the Supreme Court of Alabama affirmed the judgment of the trial court without considering the merits of the case. Asserting that "[r]ules of procedure are not traps concocted to evade decisions," the

court held that the argument section of petitioner's brief was so inadequate, and so at variance with its rules of practice, that the court had no recourse other than to affirm the trial court's judgment on procedural grounds. Thus, the cause is here for review for the fourth time in its protracted history.

2. The State's Complaint, As Amended, December 1961.

The bill of complaint (R. 1-4) alleges that petitioner is a New York corporation; that it maintains a Southeast Regional Office at 1630 Fourth Avenue, North, in Birmingham, Alabama; that it has local chapters and affiliates operating within the state; that it "employed or otherwise paid" Autherine Lucy and Polly Ann Myers to enroll at the University of Alabama; that it furnished counsel to Autherine Lucy in her proceedings against the University of Alabama seeking her admission therein; that it organized, supported and financed an illegal boycott in Montgomery, Alabama, to compel the Capital Motor Lines, a common carrier, to integrate its buses; that petitioner was collecting and expending monies to advance its aims and purposes in Alabama; that petitioner had never complied with Section 192, 193 and 194 of Title 10, Code of Alabama, 1940;[2] that it was doing business in the state without complying with these provisions to the irreparable injury of the citizens of Alabama.

Subsequently, five and a half years later, in December, 1961, the bill of complaint was amended (R. 14-17.)[3] The added allegations assert that petitioner had falsely charged

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[2] These and Sections 190, 191 of the same Title require foreign corporations to file a certified copy of their Articles of Incorporation with the Secretary of State, to designate a place of business and an authorized agent in the state for the purpose of accepting service, and exact a fine and forfeiture for failure to comply. These provisions are now codified as Title 10, Sections 21(90), 21(91), 21(92), 21(93) and 21(94), Code of Alabama, 1959, as amended.

[3] Paragraph E was not allowed, but all other amendments were granted (R. 52).

agents of the state and trustees of the University of Alabama "with acts which would appear to constitute a violation of [state] criminal conspiracy statutes . . . against riots and mobs, and . . . of . . . Title 18, USCA, Section 241 . . . as found by . . . Judge Grooms on January 24, 1957 in the case of *Lucy, et al.* v. *Adams* . . ."; that petitioner had falsely charged the Attorney General, the state courts and judiciary with "arbitrary, vindictive and collusive" action to prevent a determination of the lawfulness of its ouster by an impartial judicial tribunal and to withhold and deny access to the state courts for a hearing on the merits; that petitioner had falsely charged the Attorney General with filing contempt proceedings against the organization in April, 1958, knowing these allegations to be untrue.

It is further alleged that petitioner wilfully violated the restraining order of June, 1956, "by continuing to carry on activities in the State by and through the Alabama State Coordinating Association for Registration and Voting and by other means known to W. C. Patton, W. P. Mitchell and Roy Wilkins . . ."; that petitioner encouraged, aided and abetted unlawful breaches of the peace in many cities of the state "for the purpose of gaining national notoriety and attention to enable it to raise funds under a false claim that it is for the protection of alleged constitutional rights"; and that petitioner encouraged, aided and abetted a course of conduct "seeking to deny to the citizens of Alabama the constitutional right to voluntarily segregate (*sic*)." Finally, paragraph 9 of the original bill of complaint was amended by striking therefrom all language after race.[4]

3. Petitioner's Answer (R. 6-14).

In its answer, petitioner alleged that it was a New York corporation; that it had members and affiliate units in the state; that it had established in 1951 a Southeast Regional

[4] This is in apparent recognition of the fact that *Gayle* v. *Browder*, 352 U. S. 903, has some force and effect in Alabama.

Office in Birmingham, with Mrs. Ruby Hurley and W. C. Patton in charge; that it had not employed or paid any monies to Polly Myers Hudson or Autherine Lucy; that it had given moral and financial support and legal assistance to Negroes in Montgomery in their efforts to obtain an end to racial discrimination on the buses there; that it had helped to provide counsel for Martin Luther King when he had been prosecuted as the leader of that protest.

Petitioner admitted that it had not complied with Title 10, but asserted that the statute did not apply to it; that it had been openly and continuously operating in Alabama since 1918 with the state's knowledge, and that hence the state was barred by laches from relief in equity; that these proceedings had not been commenced in good faith, for although the Attorney General had been in correspondence with petitioner as late as May 14, 1956, he had not advised petitioner that it was violating any state law; that the real purpose of the action was to prevent citizens of Alabama from seeking an end to racial segregation and discrimination in concert with petitioner, and that prohibition of such activities constituted an unconstitutional denial of rights of freedom of expression and association, due process and equal protection of the laws guaranteed under the Fourteenth Amendment; that its acts had caused no injury to any Alabama citizen; that it had completed the requisite registration form, had attached them to its answer and, if permitted, was prepared to file them with the Secretary of State, thus waiving its claims that Title 10 was not applicable to it. Such permission was denied.

4. The December 27-29 Hearing.

At the outset, petitioner objected to segregation in the court room and to the fact that Negroes were not granted the same courtesy accorded white persons and requested the court to take corrective action on both matters. Both motions were denied (R. 36-37).

The motion to dissolve the "temporary" restraining order was argued and denied (R. 52-59). The state then proceeded to present its case.

The state introduced in evidence a transcript of the record filed in the United States Court of Appeals in this cause (R. 155-156), the opinion and findings of fact of United States District Court Judge Grooms in *Lucy* v. *Adams*, and a certified copy of the conviction of Martin Luther King and a dismissal of the appeal (R. 157-160), for his activity in connection with the Montgomery bus boycott.

The state then called the following witnesses:

Stewart Culpepper—photographer and part-time newspaper reporter—(R. 65-74).

He testified that he had been in Atlanta, Georgia on November 17, 1957, at a meeting concerned with voter registration presided over by Roy Wilkins, NAACP Executive Secretary; that W. C. Patton had been chosen to represent Alabama on a seven man committee responsible for implementing the decisions of the conference. Several photographs of persons in attendance were introduced into evidence.

Ted A. May—District Manager of Western Union, Birmingham—(R. 74-80).

He testified that on August 6, 1961, a telegram had been sent from Birmingham by W. C. Patton to a C. W. Lee at the Sheraton Hotel, Washington, D. C. The telegram authorized Mr. Lee to represent the Association in a plea for a contribution (R. 77).

C. W. Lee—Vice President of the National Funeral Directors—(R. 81-93).

Mr. Lee testified that he had stopped being a member of the NAACP when the organization ceased operating in 1956; that he had received the telegram from Mr. Patton; that the National Funeral Directors Association was meeting at the Sheraton Park Hotel in Washington at that time;

that he was a member of the Alabama State Coordinating Association for Registration and Voting; that the organization had been organized in 1952 and had been incorporated in 1957 (R. 82); that he had been a member of this organization since 1952 (R. 87); and that while the NAACP had been operating in Alabama, he had been a member of both organizations (R. 88); that Mr. Patton's telegram referred to the Alabama State Coordinating Association and not to the NAACP (R. 87).

W. C. Patton—NAACP Field Secretary—(R. 93-101, 138-156).

Mr. Patton testified that he lived in Birmingham, Alabama (R. 93); that he had been connected with the NAACP for the past ten to fifteen years (R. 94); that he had been President of the Birmingham Branch, Alabama State Conference and NAACP Field Secretary (R. 95); that he has been a full-time employee of the NAACP since 1958 as Field Secretary; that from June 1, 1956 to December 31, 1956, he had been placed on terminal pay; that he had no connection with the organization in 1957 (R. 153); that he had engaged in no NAACP activities in Alabama in his capacity as NAACP employee since June 1, 1956 to the present (R. 154); and that he had engaged in no NAACP activities in Alabama of any kind or description whatsoever since June 1, 1956 (R. 154-155); that he had made phone calls to Roy Wilkins, Mrs. Ruby Hurley, to NAACP office in New York and Memphis and to other persons in Alabama since 1956 (R. 138-142, 149-153); that the NAACP office in Birmingham was closed (R. 146); that he is President of the Alabama State Coordinating Association For Registration and Voting which had been incorporated in 1957 (R. 96) and that neither Roy Wilkins nor Thurgood Marshall had had anything to do with the formation of that organization (R. 96).

William M. Eagerton—Public Relations Manager for the Southern Bell Telephone Company, Birmingham, Alabama—(R. 102-137).

He testified concerning long distance telephone calls that had been made from Mr. Patton's telephone number in Birmingham after June 1, 1956 to various people around the country—to Roy Wilkins in New York, to Mrs. Hurley in Atlanta, and to a number in Memphis and to various other people in Alabama. He then proceeded to list all the long distance telephone calls made from Mr. Patton's telephone since June 1, 1956.

Phillip M. Lightfoot—Mayor of Tuskegee, Alabama—(R. 161-164).

He introduced several pamphlets which had been distributed and sent to him by the Tuskegee NAACP Branch dated November 21, 1954 and November 28, 1954; he did not recall having received any documents of this kind since June 1, 1956 (R. 162).

Dr. C. J. Rehling—Toxicologist and Director of the State Crime Laboratory and handwriting expert on the side—(R. 165-171).

He compared the handwriting of a Mrs. Taggart on her driver's operator license, with the handwriting of a letter introduced into evidence. He found that they were written by one and the same person. (The letter asked the receiver to make a contribution to the NAACP).

Harry Cobbs—Assistant Manager in the Bookkeeping Department of the First National Bank of Birmingham—(R. 172-174).

He testified that Mrs. Taggart's address was 330 12th Avenue, North, Birmingham—the same address on the letter introduced into evidence.

The state rested. Petitioner moved to dismiss and for judgment in its favor. The motion was denied (R. 175-180). Petitioner, thereupon, introduced testimony in its defense, as follows:

Roy Wilkins—NAACP Executive Secretary—(R. 180-199).

He explained the structure of the NAACP and the kind of activities it undertakes; that the Attorney General of Alabama had written to him in January, 1956, requesting a copy of the NAACP's Articles of Incorporation; that these had been sent, and on May 14, 1956, he had received from the Attorney General a note of thanks, but at no time had the Attorney General indicated that the Association was operating in violation of Alabama law (R. 183); that since June, 1956, when the injunction was issued against the Association, it had closed its offices in Birmingham and ceased all operations in the state; that the letter which was introduced into evidence, as being written by Mrs. Taggart, was an appeal for funds for the NAACP which had been sent at the direction of the Links, a national organization of Negro women; that the Links had undertaken this project in 1960 in an effort to raise funds for the NAACP (R. 186); that the NAACP was not connected in any way with the Alabama Coordinating Association for Registration and Voting, the Montgomery Improvement Association, or the Tuskegee Civic Association (R. 187); that the NAACP had conducted no business of any kind in Alabama since June, 1956 (R. 187-188); that there were some 29 known individual members who maintained their membership in the Association by mailing their dues to the New York office, but this was wholly unsolicited (R. 188).

MacDonald Gallion—Attorney General—(R. 200-203).

A proffer was made that if he were allowed to testify that he would have admitted that since his connection with the Attorney General's office no action, such as the present, had ever been brought against any other organization in the state (R. 203).

William F. Thetford—Circuit Solicitor of the Fifteenth Judicial Circuit—(R. 204-206).

He testified that he had occupied this position for 11 years and that during that time his office had never brought

an action such as this against any foreign corporation; that he knew the NAACP was doing business in Alabama, but did not know it had not qualified to do so.

There was additional testimony, not printed in this record, by the Chief of the Franchise Tax Division, who testified that on October 4, 1960, he had advised the First Manassas Corporation, a nonprofit organization, which had written to his office about qualifying to do business in the state, that it did not have to comply with Title 10.

The Trial Court's Ruling.

At the close of the testimony, the trial court held that the state's case against petitioner had been proved and issued a permanent injunction barring petitioner from the state (R. 209-212).

Summary of Argument

None of the charges of unlawful conduct, pursuant to which the state sought to justify injunctive relief, was supported at the trial on the merits by adequate evidentiary proof. See *Thompson* v. *Louisville*, 362 U. S. 199; *Fields* v. *Fairfield*, — U. S. —; 32 L. W. 4054, decided Dec. 16, 1963; *Garner* v. *Louisiana*, 368 U. S. 157. Petitioner admitted its failure to register with the Alabama Secretary of State as an out-of-state corporation but asserted that this omission was based upon a belief, held in good faith, that the statutory provisions in question did not apply to the organization. Nonetheless, at the outset of these proceedings in 1956, it expressed a willingness to waive its rights and comply with the state's foreign corporations' registration provisions, if permitted to do so by the court. Such permission was denied.

As the record now stands, unless petitioner's failure to register in and of itself constitutes a valid basis for ouster, the decree of the trial court cannot be sustained.

Title 10 of the Alabama Code, in its application to foreign corporations, as are the overwhelming majority of statutes of its kind, sets forth merely venue and service of process requirements. Its main purpose, like the others, is to secure information, raise revenue and protect residents of the state who might get into controversy with the out-of-state corporation. In the absence of specific statutory authority, the use of provisions of this nature to oust a foreign corporation is virtually unprecedented.

Moreover, petitioner and its members are protected in the exercise of rights of freedom of speech and association against both broad and comprehensive restrictions, as well as subtle and indirect deterrents. See *NAACP* v. *Alabama*, 357 U. S. 449; *Bates* v. *Little Rock*, 361 U. S. 516; *NAACP* v. *Button*, 371 U. S. 415, and cognate cases. Even where a valid state interest exists, necessitating an incidental interference with the exercise of these freedoms, the state's regulations must be selective and precise. See *Shelton* v. *Tucker*, 364 U. S. 479. The rationale of these cases makes evident, therefore, that whatever punitive action Alabama authorities may properly invoke, because of petitioner's failure to register as a foreign corporation, they must follow that course which impinges least upon the full enjoyment of the rights of freedom of expression and association by petitioner and its members.

The State Supreme Court has attempted to erect a barrier to a review by this Court in the interposition of a new and novel interpretation of its own rules of procedure. *Davis* v. *Wechsler*, 263 U. S. 22; *NAACP* v. *Alabama*, *supra*, clearly indicate that such attempts cannot prevail. The rationale of *Staub* v. *Baxley*, 355 U. S. 313, and *Wright* v. *Georgia*, 373 U. S. 284, moreover, stand for the principle that even absent newness and uniqueness in the state's procedural regulations, barriers to review of federally asserted claims will not be countenanced by this Court, when grounded in outmoded technicalities and arid

rituals of form. The protracted history of this case, the trivial and superficial grounds upon which the Alabama Supreme Court based its avoidance of review on the merits constitute a denial by that court to petitioner of its day in court. Thus, petitioner respectfully submits, it has been denied due process within the meaning of *Hovey* v. *Elliot*, 167 U. S. 409, as well as equal protection of the laws. See *Griffin* v. *Illinois*, 351 U. S. 12.

The course of these proceedings, now here for a fourth time, and the doggedness of the Supreme Court of Alabama in refusing to follow the mandate of this Court make it clear that if petitioner's claims are vindicated, neither it, nor its members will enjoy in Alabama in the foreseeable future any of the rights sustained here, unless this Court fashions a detailed decree that will permit petitioner and its members to assert those rights, without the need of further recourse to the state courts of Alabama to effectuate this Court's mandate.

ARGUMENT

I.

Unless the mere good faith failure of a foreign corporation to register is itself a sufficient basis for ouster, the Trial Court's judgment is inconsistent with the due process requirements of the Fourteenth Amendment.

At the hearing below, no attempt was made to prove most of the state's allegations set forth in its bill of complaint and as amended, (*e.g.*, that petitioner had employed or paid Autherine Lucy, etc. (R. 2); that its activities were causing irreparable injury to the property and civil rights of residents of the State of Alabama (R. 3); that it was aiding and abetting unlawful breaches of the peace in many

cities of the state and seeking to deny to Alabama citizens the right to segregate voluntarily (R. 16)). These charges stand completely unsupported by any semblance of evidentiary proof.

Apparently, the state's theory was that it could show that petitioner had violated the June 1, 1956 "temporary restraining order and injunction" by evidence that petitioner and the Alabama Coordinating Association for Registration and Voting were in fact one and the same; that W. C. Patton, NAACP Field Secretary, had been engaged in activities in Alabama since 1956, in violation of the injunction; and that the organization itself was continuing to carry on activities in the state in violation of the restraining order.

The state's theory collapsed for lack of testimonial support. Indeed, the uncontroverted evidence is all to the contrary, that: (1) the Alabama Coordinating Association for Registration and Voting is an organization completely independent of, and with no ties to petitioner; (2) Mr. Patton had not engaged in any NAACP activities in the State of Alabama since June 1, 1956; and (3) petitioner had closed its office in Birmingham, solicited no members and had carried on no activites of any kind whatsoever since the date the injunction was issued. Consequently, petitioner stands completely vindicated on this record of any violation of the June 1, 1956, restraining order. Certainly if petitioner is guilty of an offense warranting punishment, that transgression must be established by appropriate evidence set forth in this record. See *Thompson* v. *Louisville*, 362 U. S. 199; *Garner* v. *Louisiana*, 368 U. S. 157; *Fields* v. *Fairfield*, — U. S. —, 32 L. W. 4054, decided December 16, 1963.

The trial judge asserts that the state's allegations "have been proved by the overwhelming weight of the testimony" (R. 209), but this statement is insufficient to render proved what has not been established. Mr. Justice Frankfurter,

concurring in *Garner* v. *Louisiana, supra,* at page 175, has put the matter aptly and succinctly:

> A judge's private knowledge, or even "knowledge by notoriety," to use Dean Wigmore's phrase, IX Evidence, Sec. 2569 (Third ed. 1940), not presented as part of the prosecution's case capable of being met by a defendant, is not an adequate basis, as a matter of due process, to establish an essential element of what is punished as crime. *Thompson* v. *City of Louisville,* 362 U. S. 199.
>
> It may be unnecessary to require formal proof, even as to an issue crucial in determining guilt in a criminal prosecution, of what is incontestably obvious. But some showing cannot be dispensed with when an inference is at all doubtful.

Here, the only evidentiary proof of a violation of Alabama law by petitioner is its own admission filed in its answer in 1956, that it had failed to comply with Title 10, Sections 190-194, Code of Alabama, 1940 [now Sections 21(90), 21(91), 21(92), 21(93) and 21(94), Code of Alabama, 1959 as amended]. While willing to waive its claim of immunity to the requirement to register, petitioner averred then that it did not believe these provisions were applicable to it. Evidence at the trial showing that a non-profit corporation had been advised by the Chief of the State Franchise Tax Division on October 4, 1960, that it "was exempt from qualifying as a foreign corporation", would seem to support this view. However untenable petitioner's views may be as to Alabama provisions having application to it, unless its mere failure to register can justify its permanent ouster and a denial of the right to solicit members or maintain affiliate units in the state, there is no evidentiary support to sustain the judgment below. See *Thompson* v. *Louisville, supra.* Under these circumstances, the judgment is in derogation of petitioner's rights of substantive due process.

II.

The mere good faith failure of petitioner to register as a foreign corporation without more is not a sufficient basis upon which the judgment of the Trial Court can be sustained.

1. Petitioner has had members and affiliates in Alabama continuously since 1918. All during that period, it has operated openly and, with the full knowledge of state officials, sponsored and supported litigation to vindicate a broad range of civil rights of Negro citizens in the state (*e.g.*, *Canty* v. *Alabama*, 309 U. S. 629; *Fikes* v. *Alabama*, 352 U. S. 191; *Mitchell* v. *Wright*, 154 F. 2d 924 (5th Cir. 1946), cert. denied, 329 U. S. 733; *Gayle* v. *Browder*, 352 U. S. 903; *Reeves* v. *Alabama*, 348 U. S. 891; *Taylor* v. *Alabama*, 335 U. S. 252. As late as May, 1956, the State Attorney General was in correspondence with petitioner's chief executive officer requesting copies of the charter and constitution of the organization and other information. At no time did the Attorney General suggest that petitioner was violating the laws of the state. Yet, on June 1, 1956, proceedings were commenced alleging a violation of state law.

Under these circumstances, petitioner respectfully submits, the doctrine of laches bars recourse to relief in equity. In *United States* v. *Stinson*, 125 F. 907, 910 (7th Cir. 1903), aff'd., 197 U. S. 200, the basic rule as to the application of equity to actions by the government was laid down. There it was said:

> The government may not in conscience ask a court of equity to set on foot an inquiry that, under the circumstances of the case, would be an unfair or inequitable inquiry. The substantial considerations underlying the doctrine of estoppel apply to government as well as to individuals.

Alabama decisions are to the same effect. In *Brown* v. *Tuskegee Light & Power Co.*, 232 Ala. 361, 367-368, 168 So. 159, 165 (1936), the Supreme Court of Alabama said:

> In effectuating this elemental principle denying relief in equity which is not equitable, our Court, in common with prevailing authorities generally, applies the doctrine of estoppel in pais even against the state or its governing subdivision.

Laches was held to be a barrier against the state to relief in equity in *United States* v. *Property on Pinto Island*, 74 F. Supp. 92 (S. D. Ala. 1947); *State ex rel Roberson* v. *Town of Pell City*, 157 Ala. 380, 47 So. 246 (1908); *Powell* v. *City of Birmingham*, 258 Ala. 159, 167, 61 So. 2d 11, 18 (1952).

2. Title 10, Sections 190-194, Code of Alabama 1940 [now recodified as Title 10, Sections 21(90), 21(91), 21(93) and 21(94) of the Code of Alabama, 1959, as amended)] are mere venue and service of process provisions. While a fine for noncompliance is provided, there is no statutory language authorizing the ouster of a foreign corporation which has not complied with the foreign corporation provisions, but is willing to do so. These provisions are similar to those of the overwhelming majority of state statutes dealing with the registration of foreign corporations.[5]

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[5] See e.g., Arizona Constitution, Article 14, Section 17 (Revised Statutes Ann., 1956), which provides that no foreign corporation shall have authority to do business in the state until it shall have obtained from the corporation commission a license to do business upon such terms as may be prescribed by law.

California Corporations Code (as amended 1959), Section 6403 provides that a foreign corporation shall not transact intrastate business without having obtained from the Secretary of State a certificate of qualification; Section 6408 imposes a fine for noncompliance and provides that the commissioner of corporations shall be deemed an agent for service of process for such noncomplying corporations.

General Laws of Idaho Ann. (1947), Section 30-501 (as amended 1955) provides that foreign corporations must register with the Secretary of State before doing business; Section 30-508 makes officers of noncomplying corporations personally liable; Section 30-509 denies the benefit of the statute of limitations to corporations during periods of time when no one has been designated as agent for

There are some jurisdictions where statutory authority for the exclusion of an out-of-state state corporation that

service of process; Section 30-510 provides that upon compliance such a foreign corporation shall have the same rights as a domestic corporation.

Iowa Code Ann. (1949), Section 494.1 (as amended, 1951) provides that any foreign corporation shall file certain information with the Secretary of State prior to doing business in the state, and shall ask for the issuance of a permit to do business; Section 494.12 provides a fine for doing business without a permit; Section 494.9 provides that a foreign corporation cannot sue on a contract made before the permit is issued.

New Jersey Statutes Ann. (1937), Section 14:15-3 provides that foreign corporations must have a certificate of authority to do business; Section 14:15-6 provides a fine for doing business without such a certificate.

North Dakota Century Code Ann. (1960), Section 10-22-01 (as amended, 1961) provides that foreign corporations must obtain a certificate of authority from the Secretary of State; Section 10-22-19 provides that a noncomplying corporation may not sue on a contract within the state until it has obtained a certificate of authority, and also provides fees and monetary penalties.

General Laws of Rhode Island Ann. (1956), Section 7-2-23 provides that foreign corporations must register and pay a fee as a condition precedent to carrying on business in the state; Section 7-2-28 provides that failure to comply shall result in a fine and that a noncomplying corporation cannot sue on a contract until it has complied.

Texas Civil Statutes Ann. (1955), Article 8.01 provides that a certificate of authority must be obtained prior to doing business; Article 8.18 provides that a noncomplying corporation shall be fined and that it may not sue on a contract unless it has a certificate of authority.

Code of Virginia Ann. (1950), Section 13.1-102 (as amended, 1956) provides that no foreign corporation shall transact business before obtaining a certificate of authority from the corporation commission; Section 13.1-19 (as amended, 1956) provides a fine and prevents an unregistered corporation from maintaining a suit until it obtains a certificate of authority.

Wyoming Statutes Ann. (1957), Section 17-36.95 (as amended, 1961) provides that a foreign corporation must obtain a certificate of authority to do business; Section 17-36.113 (as amended, 1961) provides that a foreign corporation may not sue on a contract until it has its certificate and pays taxes and monetary penalties for noncompliance.

fails to register is specifically granted, but even in these jurisdictions, reinstatement generally follows upon compliance.[6]

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[6] See e.g. Massachusetts General Laws Ann. (1955), Chapter 181, Section 19 (as amended, 1962) which authorizes the Supreme Judicial Court upon information to proceed in equity in the name of the Attorney General to restrain a foreign corporation from exercising any corporation right or franchise until compliance with Section 3 and 5 of Chapter 181, which require registration with the Secretary of State. See also Nevada Revised Statutes, Section 80.160 (Supp. 1959) which directs the Secretary of State to publish yearly in the newspapers a list of foreign corporations which have not filed with the Secretary of State their permission to do business in the state and a notice that if fees and penalties are not paid before a certain date, the defaulting corporation forfeits taxes and costs and the right to carry on business; Section 80.170 (Supp. 1959) directs the Secretary of State to give a certificate of reinstatement to any foreign corporation which pays the fees and penalties, and to file a copy of this certificate in the office of the county clerk in the county where the principal place of business of the corporation is located. Vermont Statutes Ann. (1958), Title 11, Section 861 gives the Attorney General authority to go into Chancery Court for a permanent injunction against any foreign corporation doing business without authorization from the commissioner of foreign corporations; Section 862 sets out that if a corporation complies before a permanent injunction is issued, the Attorney General's complaint may be dismissed upon payment of costs. Indiana Ann. Statutes (1960), Section 25-314 provides that a noncomplying foreign corporation can be ousted, but the case law establishes that the corporation's rights are only suspended until compliance (*Warren Co.* v. *Exodus*, 114 App. 563, 53 N. E. 2d 546, 575; *Farmers Mutual Hail Ins. Co. of Iowa* v. *Gorsuch*, 123 App. 264, 110 N. E. 2d 344. New York General Corporation Law (1963), Section 219 also provides for possibility of ouster; however, the case law clearly shows that this sanction is used only in instances where a fraud upon the people of the state has been committed (*People* v. *National Cancer Hospital of America*, 200 Misc. 363, 102 N. Y. S. 2d 103, 110, aff'd, 153 N. Y. S. 2d 63, 1 N. Y. 2d 802 (1956); *People* v. *Jewish Consumptive's Relief Society*, 196 Misc. 579, 92 N. Y. S. 2d 157 (1949). Section 1703.28, Ohio Rev. Code Ann. provides for a forfeiture of from $250-$10,000 for failure to register, but for good cause shown this may be remitted. Section 300:7, New Hampshire Rev. Stat. Ann. (1955) provides that any corporation refusing to register may be restrained from doing further business.

Thus, it seems clear that the intendment of all such laws is to compel the disclosure of relevant information about the structure and activities of the foreign corporation, to raise revenue and to make certain that the out-of-state corporation is amenable to service of process in the event of a controversy with residents of the state. The chief function of these provisions, therefore, is not to expel foreign corporations or to bar them from the state. Indeed, if such were their purpose, serious questions concerning adherence to requirements of equal protection of the laws would arise.

That the Alabama provisions are designed to achieve these general objectives is further evidenced by the fact that, under Alabama law, a contract made by a foreign corporation before it registers to do business becomes valid, if registration subsequently takes place, if both parties so regard it. *Montgomery Traction Co.* v. *Montgomery Light and Water Power Co.*, 229 Fed. 672 (5th Cir. 1916).

Where there is no law authorizing exclusion for failure to register, ouster is virtually unprecedented. In its search of the law, petitioner has come upon an 1894 case in Iowa—one of the jurisdictions with provisions similar to Alabama—in which pursuant to *quo warranto* proceedings the ouster of a foreign corporation was authorized but only if it did not comply within 60 days. The court pointed out that the corporation was under the mistaken belief that registration was not required. *State ex rel. Crossland v. Omaha & C. B. Ry.*, 91 Iowa 517, 60 N. W. 121 (1894).

Failure, not unwillingness, to register is the sole activity evidenced in this record which is even arguably illegal. This failure was a result of petitioner's good faith belief that the registration provisions did not apply to it as a non-profit organization and one whose activities were mainly of an interstate character. Cf. *Eaton* v. *Woman's Home Missionary Society*, 264 Ill. 88, 106 N. E. 746 (1914).

3. The doctrine that a state may exclude a foreign corporation on any ground, which originated in colonial times when corporations were monopolies incorporated by special act of the legislature,[7] is now of dubious reliability at best, if not totally moribund. See *Freeman* v. *Hewitt*, 329 U. S. 249; *Butler Bros. Shoe Co.* v. *U. S. Rubber Co.*, 156 Fed. 1 (8th Cir. 1907); *Crutcher* v. *Kentucky*, 141 U. S. 47; *Simonetti Bros. Produce Co.* v. *Peter Fox Brewing Co.*, 240 Ala. 91, 197 So. 38 (1940).

It is now recognized that a foreign corporation is entitled to equal protection of the laws, see, *e.g.*, *Southern Railway* v. *Greene*, 216 U. S. 400; *Western Union Telegraph Co.* v. *Kansas ex rel Coleman*, 216 U. S. 1; *Hanover Fire Insurance Co.* v. *Harding*, 272 U. S. 494, and being a "person" under the Fourteenth Amendment, must be accorded guarantees of due process. *Liggett* v. *Baldridge*, 278 U. S. 105; *Smyth* v. *Ames*, 169 U. S. 466,522. Just as a natural person may not be prevented from pursuing a lawful occupation, *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, so a corporation may not be prevented from engaging in lawful pursuits. *New State Ice Co.* v. *Liebmann*, 285 U. S. 262. Indeed, a corporation cannot be forced to submit to any arbitrary exercise of governmental authority. As this Court said in *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 513:

> ... A State may not, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them. *Lawton* v. *Steele*, 152 U. S. 133, 137; *Meyer* v. *Nebraska*, 262 U. S. 390, 399.

These proceedings, therefore, must be measured against Fourteenth Amendment yardsticks of due process and equal protection to determine their validity. Petitioner respect-

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[7] *Bank of U. S.* v. *Deveaux*, 9 U. S. (5 Cranch.) 61 (1809).

fully submits that the arbitrariness, discriminatory nature and illegality of the state's acts, when appraised by those standards, are clearly revealed.

This action is the result of the kind of organization petitioner is, not because of any derelictions in compliance with Title 10. In truth, what the state is really attempting to impose upon all foreign corporations, through petitioner as an example, is agreement that they will not challenge the legality of racial segregation or seek its abolition as the price of their continued permission to operate within the state. Such an implied or implicit imposition of unconstitutional conditions violates the Fourteenth Amendment. *Williams* v. *Standard Oil Co. of Louisiana*, 278 U. S. 235; *Pullman Co.* v. *Kansas*, 216 U. S. 56, 63; *Harrison* v. *St. Louis & San Francisco Ry. Co.*, 232 U. S. 318; *Donald* v. *Philq. & Reading Coal & Iron Co.*, 241 U. S. 329; *Lafayette Ins. Co.* v. *French*, 59 U. S. (18 How) 404, 407. And see *Hill* v. *Florida*, 325 U. S. 538, 543.

III.

State registration requirements cannot justify the deterrence or stifling of the exercise of constitutionally protected rights of freedom of speech and association.

The nature of the petitioner organization has been explained in great detail to this Court in prior proceedings in this cause, *NAACP* v. *Alabama*, 357 U. S. 449, and in other cases, *e.g.*, *NAACP* v. *Button*, 371 U. S. 415. Therefore, an extended restatement of petitioner's organizational structure, operational methods, aims and purposes would appear to be unnecessary verbiage. Petitioner established its first affiliate unit in Alabama in 1918. Between 1918 and June 1, 1956, petitioner functioned in Alabama through its members and affiliates. Petitioner's only purpose—its sole

business—is the elimination of racial discrimination and segregation, and the establishment of full-fledged citizenship status for Negroes throughout the breadth and length of the United States.

It is no longer open to question that in pursuing these objectives by means of advocacy and lawful activities, including the sponsorship of litigation, petitioner and its members are engaged in the exercise of modes of expression and association protected under the Fourteenth Amendment against unwarranted state interference. See *NAACP* v. *Alabama, supra; Bates* v. *Little Rock*, 361 U. S. 516; *Louisiana* v. *NAACP*, 366 U. S. 293; *Gibson* v. *Florida Legislative Investigation Committee*, 372 U. S. 539; *NAACP* v. *Button*, 371 U. S. 415. As this Court said in *NAACP* v. *Button, supra* at page 429:

> In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country.

Petitioner admits giving legal aid to Autherine Lucy in her ill-fated attempt to secure admission to the University of Alabama. But *NAACP* v. *Button, supra*, makes clear that this admission furnishes no basis for punitive state action.

Petitioner also admits that it gave encouragement in the form of financial, moral and legal support to Negroes in Montgomery in their effort to secure equal treatment and the elimination of segregation on the Capital Motor Lines. Rev. Martin Luther King was found guilty of a violation of Alabama law for his activities in connection with this effort. But whether persons who, in concert, seek to persuade the public by picketing or other peaceful means, not to patronize a commercial enterprise because of its

policy of racial discrimination, are subject to state interference, in the light of the Fourteenth Amendment's guarantee of freedom of expression and association, has not been settled with finality. A case in which that issue is squarely raised is scheduled for argument this term (*NAACP* v. *Webb's City* [No. 362]). It would seem evident, therefore, that petitioner, Rev. Martin Luther King, and other persons who advocate group pressure to force commercial establishments to accord Negro consumers equal treatment, advocate a course of conduct that is, at least, arguably legitimate. Cf. *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552. However that issue may be decided ultimately, it is manifest, petitioner respectfully submits, that its illegality is not sufficiently foreclosed to support the decree in question here, particularly since the admitted support embraced only encouragement, and moral, financial and legal aid.

This Court has made clear in case after case that rights of freedom of expression and association, however unpopular, and legitimate activities in furtherance thereof, are protected against open and broad attacks as well as more indirect intrusions.

As Mr. Justice Stewart stated in *Bates* v. *Little Rock*, *supra* at page 523:

> [First Amendment freedoms] are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference.

And even though the governmental interest may be valid, where these freedoms are concerned, its purpose cannot be accomplished by broadside restrictions that deter the free exercise of these rights where the government's purpose can be achieved by a more particularized and precise regulation. Again, a statement by Mr. Justice Stewart is an apt illustration of this principle. Speaking for the Court in *Shelton* v. *Tucker*, 364 U. S. 479, 488, he said:

> . . . even though the governmental purpose be legitimate and substantial, that purpose cannot be

> pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of [the] abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.

Mr. Justice Douglas, speaking in *Louisiana* v. *NAACP*, 366 U. S. 293, said that the Court had emphasized that all state action must be highly selective to survive challenge under the First Amendment. Continuing, he added at page 297:

> At one extreme is unlawful conduct which cannot have shelter in the First Amendment. At the other extreme are regulatory measures which, no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.

These cases make clear that Alabama authorities could not directly and openly interfere with the rights of freedom of expression and association of petitioner and its members, except upon a showing of a subordinating important and vital state interest. See *NAACP* v. *Alabama, supra; Gibson* v. *Florida Legislative Investigation Committee, supra*; And what cannot be done directly cannot be accomplished indirectly, in the guise of enforcing registration requirements. Cf. *Bates* v. *Little Rock, supra*. This is particularly so where the state's legitimate interest can be preserved by regulations narrowly drawn and fashioned to meet the purpose which the state seeks to accomplish.

Thus, conceding that the state can require petitioner to register as an out-of-state corporation and subject it to punishment for its failure to do so, it does not follow that this judgment, which accomplishes a complete abridgment of rights of freedom of association and expression, can be sustained. A legal remedy was available to the state under Title 10, and the penalty therein provided constitutes the only possible punitive measure which the state could have validly invoked. For these reasons, petitioner respectfully contends, the judgment below must be struck down as an unconstitutional invasion of First Amendment freedoms.

IV.

The judgment of the Supreme Court of Alabama does not rest on sufficient state grounds to bar review by this Court.

The Supreme Court of Alabama affirms the judgment of the trial court on state procedural grounds. That decision, however, does not and cannot bar this Court's review on the merits and adjudication of petitioner's federally asserted claims. The Supreme Court of Alabama states that its rules require that an appellant's brief contain "argument with respect to errors assigned which counsel desire to insist upon." The court reads this rule as meaning that when assignments of error are argued "in bulk" and one is without merit, the court cannot consider others argued with it "in bulk." Significantly, petitioner's alleged violation of this rule was not raised by the state in its brief. Neither the state, nor the court on oral argument mentioned petitioner's violation of what the court now treats as a basic, well-known procedural requirement of long standing.

As can be seen by a reading of petitioner's brief (Appendix B, Petition for Writ of Certiorari), each assignment of error was argued separately. Thus, there was no violation of Rule 9(d). Neither that rule, nor any precedent in the case law exists to show that each assignment of error must appear under a different sub-section heading. Furthermore, prior rulings of the Supreme Court of Alabama show that even where flagrant violations of the rule have occurred, the assignments have been disposed of on the merits. See *Bolton* v. *Barnett Lumber Supply Co.*, 267 Ala. 74, 100 So. 2d 9 (1958); *Guy* v. *Lancaster*, 250 Ala. 287, 290, 34 So. 2d 499, 502 (1948), *Thompson* v. *State*, 267 Ala. 22, 99 So. 2d 198, 200 (1957); *Madison Limestone Co.* v. *McDonald*, 264 Ala. 295, 87 So. 2d 539 (1956); *Shelby County* v. *Baker*, 269 Ala. 111, 110 So. 2d 896 (1959); *Edge* v.

Bice, 262 Ala. 273, 82 So. 2d 252, 254 (1955); *Simmons* v. *Cochran*, 252 Ala. 461, 41 So. 2d 579, 580 (1949); *Christian* v. *Fidelity and Casualty Co. of New York*, 264 Ala. 616, 88 So. 2d 840 (1956); *Brothers* v. *Brothers*, 94 So. 175 (1922); *Wood* v. *Wood*, 82 So. 2d 556 (1955); *Quinn* v. *Hannow*, 80 So. 2d 239 (1955); *Bell* v. *Fulgham*, 202 Ala. 217, 80 So. 39 (1918); *Stariha* v. *Hagood*, 40 So. 2d 85 (1949); *Kendall Alabama Co.* v. *City of Fort Payne*, 79 So. 2d 801 (1955); *City of Montgomery* v. *Mott*, 266 Ala. 422, 96 So. 2d 766 (1957); *State v. Farabee*, 268 Ala. 437, 108 So. 2d 148 (1959); *Brooks* v. *Everett*, 271 Ala. 380, 124 So. 2d 100 (1960).

Moreover, under Alabama law the decree from which petitioner appealed is regarded as a unit and not severable. In such a case, error is regarded as permeating the entire unit. Therefore, there was no need to make separate assignments of error, and no necessity for an argument to be made under each specific assignment. One overall argument is sufficient. See *Birmingham Electric* v. *Alabama Public Service Commission*, 47 So. 2d 455 (1949); *Styles* v. *Lampert*, 94 So. 2d 784 (1957); *Hartford Fire Insurance Co.* v. *Clark*, 258 Ala. 141, 61 So. 2d 19 (1952); *Christian* v. *Fidelity and Casualty Co. of New York*, 264 *Ala.* 616, 88 So. 2d 840 (1956).

Under these circumstances, the rule of this Court in *Davis* v. *Wechsler*, 263 U. S. 22, 24; *NAACP* v. *Alabama*, *supra*, and cognate cases is applicable.

Apart from the principles enunciated in *Davis* v. *Wechsler*, *supra*, and recently reiterated in *NAACP* v. *Alabama*, in respect to the erection of new and novel procedural bars, the more recent approach to this question, as explicitly stated in *Staub* v. *Baxley*, 355 U. S. 313, and in *Wright* v. *Georgia*, 373 U. S. 284, makes clear that this case is properly before this Court for it to determine on the merits the validity of the claims asserted throughout these proceedings

by petitioner that its federally protected rights and those of its members have been violated. In *Staub* and *Wright*, this Court refused to allow the invocation of what this Court described as an "arid ritual of meaningless form" to frustrate an attempt to secure final determination of rights which petitioner asserted as being guaranteed under the Fourteenth Amendment.

The reasoning expressed below to justify a refusal to decide this cause on the merits is even more trivial than those held insufficient in the *Staub* and *Wright* cases. In the light of the long history of this case, of petitioner's persistent efforts to obtain a hearing on the merits, its repeated assertion that the injunction ousting it from the state violated both state and federal law, it is difficult to conceive of the state court being ignorant of the grounds upon which petitioner sought to establish the fatal infirmity of the trial court's decree. In 1959, Anthony Lewis, a noted commentator on the America judicial system, in reference the instant controversy stated: "What can be said for the intellectual honesty of a state court system that has kept the NAACP out of business for three years with a "temporary restraining order,' despite a Supreme Court reversal of the case almost a year ago." Yet in 1963, over three years after that comment, the Supreme Court of Alabama finds it necessary to affirm the lower court judgment without a consideration of the merits, because of the improper briefing of petitioner's argument. This would appear to be not only reliance on arid and meaningless form, but a callous indifference to petitioner's entitlement to fair play.

Since the decision below confers jurisdiction on this Court, exercise of that authority, petitioner respectfully submits, requires this Court to make its own independent evaluation of the evidentiary facts upon which the trial court's adjudic-

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[6] Lewis, *The Role of the Supreme Court*, 45 A. B. A. J. 911, 990 (1959).

ation of petitioner's constitutional claims is based. See *Garner* v. *Louisiana, supra*; *Wright* v. *Georgia, supra*.

The denial of a review on the merits by an appellate court has been struck down when invidious discrimination has been manifested. See *National Union of Marine Cooks and Stewards* v. *Arnold*, 348 U. S. 37, 41-45; *Griffin* v. *Illinois*, 351 U. S. 12, 18; *Burns* v. *Ohio*, 360 U. S. 252, 257; *Douglas* v. *California*, 372 U. S. 353. In these cases, the Fourteenth Amendment's equal protection yardstick has been held to proscribe differentiations that have no relation to a rational policy.

Since *Hovey* v. *Elliott*, 167 U. S. 409, there has been an implicit assumption that the due process clause was a barrier to arbitrariness in a court proceedings which has the effect of denying a litigant his day in court. Cf. *Societe Internationale* v. *Rogers*, 357 U. S. 197, 209, 210. And see *Aero Design & Engineering Co.* v. *Oklahoma Employment Security Comm.*, 151 F. Supp. 844, 846 (W. D. Okla. 1956), aff'd. *per curiam*, 353 U. S. 943, where the court said:

> But here, a federal constitutional question is presented of which the Supreme Court of the United States is the final judge. A full day in court contemplates as a part of the judicial process a right to be heard in the court of last resort on the constitutional question.

The Alabama Supreme Court in this cause states that "[r]ules of procedure are not traps concocted to evade decisions" (R. 221). This accords with this Court's interpretation of the federal rules of procedure. As was said in *Conley* v. *Gibson*, 355 U. S. 41, 48:

> The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. *Maty* v. *Grasselli Chemical Co.*, 303 U. S. 197.

And the statement in *Foman* v. *Davis*, 371 U. S. 178, 181 is particularly opposite:

> It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. . . . The Rules themselves provide that they are to be construed "to secure the just, speedy and inexpensive determination of every action."

Thus, both this Court and the Alabama Supreme Court agree that the function of rules of procedure is to facilitate adjudication and not to bar a final determination on the merits. Yet, the court below seeks to justify its refusal to carry out that principle on such trifling superficialities, as to warrant petitioner's claim that its day in court has been effectively denied in violation of the Fourteenth Amendment's guaranty of due process.

V.

This Court should formulate a detailed decree which, without the necessity of any further action on the part of the state court, will entitle petitioner to whatever relief the Court finds is appropriate in this case.

Petitioner has been subjected to a "temporary restraining order and injunction" since June 1, 1956, without being able to test the validity of that decree until December 27, 1961, when, under compulsion from this Court, a hearing on the merits finally took place. The cause is now before this Court for the fourth time. Throughout the 7 years and more history of these proceedings, the Supreme Court of Alabama has persisted in its refusal or failure to implement the mandate of this Court.

Finally the state granted petitioner a hearing on the merits. The record of that hearing is absolutely barren of any semblance of evidentiary support for the state's posi-

tion that ouster of petitioner is justified. The Supreme Court of Alabama sought to interpose new and novel technicalities and trivialities of procedure, in an apparent attempt to bar review by this Court of the trial court's arbitrary decree. Petitioner is confident that the law is too well settled to the contrary for this attempt to succeed. It is submitted that if this Court holds, after review on the merits, that petitioner is entitled to resume its activities in the state but leaves to the Supreme Court of Alabama the necessity of implementation of that holding, petitioner, undoubtedly, will be forced to bring the cause here for a fifth time.

The rights which petitioner asserts on its behalf and on behalf of its members are personal and present rights, as this Court held in *Sweatt* v. *Painter*, 339 U. S. 629. That principle was reiterated most recently by Mr. Justice Goldberg in *Watson* v. *Memphis*, 373 U. S. 526, 533. "The basic guarantees of our Constitution are warrants for the here and now . . .". The fact is that petitioner's Alabama operation has been destroyed. It has lost property in the form of membership dues and contributions. More importantly, however, in these past seven years, it has been denied the opportunity to be actively engaged in the struggle of Alabama citizens to secure their basic citizenship rights, and Alabama residents have been denied the right to join forces under petitioner's aegis in a concerted attempt to free themselves of the burdens of racial restrictions and restraints.

It is time for this case to be settled, and settled with finality. If the ouster of the petitioner is held to be lawful, that will finish the matter. If, however, petitioner's contentions are sustained, it is respectfully submitted that this Court can accord petitioner effective relief only by clearly setting forth, as a part of its determination, a sufficiently detailed decree, entitling petitioner to resume operations in Alabama, without the necessity of further recourse to the state courts.

CONCLUSION

Wherefore, for the reasons hereinabove stated, it is respectfully submitted, the injunction against petitioner should be vacated and a decree should be entered entitling petitioner to function in Alabama without need of its effectuation by the State Courts.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation

Petitioner

v.

STATE OF ALABAMA ex rel. RICHMOND M. FLOWERS
Attorney General of the State of Alabama

Respondent

BRIEF FOR RESPONDENT

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In The

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STATE OF ALABAMA ex rel. RICHMOND M. FLOWERS

Attorney General of the State of Alabama

Respondent

BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Does this court have jurisdiction of the Petition for Writ of Certiorari?

2. Did affirmance, without reaching the merits, by the Supreme Court of Alabama for failure of petitioner to comply with the court's rules relative to assignments of error and proper argument thereof in brief deprive petitioner of any Federal constitutional right?

ARGUMENT

An assignment of error is in Alabama an instrument of appellate pleading. *Board of Education of Colbert County v. Mitchell*, 270 Ala. 594, 121 So.2d 103; *Wetzel v. Hobbs*, 249 Ala. 434, 31 So.2d 639.

It is the duty of an appellant to see that his appeal is perfected according to the requirements of the statutes and

rules of court. *State v. Fourth National Bank of Columbus, Georgia*, 270 Ala. 135, 117 So.2d 145.

Federal courts have affirmed or dismissed appeals for failure to comply with rules similar to the ones here applied. *Butter v. United States*, 108 Fed.2d 27; *Fleming v. Musingwear*, 162 Fed.2d 125; *Matthewson, et al. v. First Trust Co. of St. Joseph, Mo.*, 100 Fed. 2d 121; *American Ins. Co. v. Scheufler*, 129 Fed.2d 143; *The Catherine v. The United States*, 11 U.S. 99; *Portland Co. v. United States*, 82 U.S. 1.

As a general rule, matters of local practice are not open for review in the Supreme Court of the United States. *Washington v. Miller*, 235 U.S. 422.

It rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local law; and state courts may refuse to consider a Federal claim if the appellant violates reasonable state rules of procedure. *Parker v. Illinois*, 333 U.S. 571; *Jacobi v. Alabama*, 187 U.S. 133; *Fox Film Corporation v. Muller*, 296 U.S. 207; *In re Marshall Lumkin*, 355 U.S. 59, 2 L.Ed. 29.

However, the lower appellate court must have fair and substantial support for its ruling and it must not be new or novel. *Wright v. Georgia*, 373 U.S. 284; *Williams v. Georgia*, 349 U.S. 375; *Davis v. Wechsler*, 263 U.S. 22; *N.A.A.C.P. v. Alabama*, 357 U.S. 449.

The Supreme Court of Alabama considered petitioner's brief in that court. In many respects, it was sufficient.

It was not sufficient in that under five separate subdivisions assignments of error were grouped; they were not related and were subject to the long standing rule of frequent application that where assignments of error are argued together and one is without merit, the others will not be considered.

Alabama Supreme Court Rule 9 provides the following:

> "Appellant's brief under separate headings shall contain: (a) under the heading 'Statement of the Case,' a concise statement of so much of the record as fully presents every error and exception relied upon referring to the pages of the transcript; (b) under the heading 'Statement of the Facts,' a condensed recital of the evidence in narrative form so as to present the substance clearly and concisely, referring to the pages of the transcript, and if the insufficiency of the evidence to sustain the verdict or finding, in fact or law, is assigned, then the statement shall contain a condensed recital of the evidence given by each witness in narrative form bearing on the points in issue so as to fully present the substance of the testimony of the witness clearly and concisely; (c) under the heading 'Propositions of Law,' a concise statement, without argument, of each rule or proposition of law relied upon to sustain the errors assigned, together with the authorities relied upon in support of each, and in citing cases, the names of parties must be given, with the book and page where reported; (d) argument with respect to errors assigned which counsel desire to insist upon. Assignments of error not substantially argued in brief will be deemed waived and will not be considered by the court. The statements made by appellant under the headings 'Statement of the Case' and 'Statement of the Facts' will be taken to be accurate and sufficient for decision, unless the opposite party in his brief shall make the necessary corrections or additions."

The court has said that the rule should be liberally con-

strued and fairly applied but must not be wholly ignored. The Supreme Court of Alabama may in its discretion consider the brief, though not in compliance with the rule, where the brief fairly and helpfully makes the points upon which appellant relies. The court has discretion as pointed out in *Commercial Standard Insurance Company v. New Amsterdam Casualty Company*, 131 So.2d 182, and *Bolton v. Barrett Lumber and Supply Company*, 267 Ala. 74, 100 So.2d 9, but we know of no case where the court has considered the merits when there was no assignment of error or when one of several unrelated joint assignments of error was not well taken. *Dobson v. Deason*, 258 Ala. 219, 61 So.2d 764. This is true in both the Court of Appeals and the Supreme Court of Alabama. *Snellings v. Jones;* 33 Ala. App. 301, 33 So.2d 371; *Alabama Chemical Co. v. Hall*, 212 Ala. 8, 10, 101 So. 456.

We go back sixty years to an unbroken line of decisions. In *Mobile, Jackson & Kansas City R. R. Co. v. Bromberg*, 141 Ala. 258, 37 So. 395, it was ruled that a joint assignment of several rulings can avail nothing unless each is good.

The following is stated in Volume 2A, Alabama Digest, "Appeal and Error," Key No. 736:

> "Where assignments of error are joint as to more than one ruling, they must fail unless valid as to all such rulings."

Then follows the citation of some one hundred fifty cases or more from the Court of Appeals and Supreme Court of Alabama showing that this rule is applicable and applied to all assignments of error on pleadings, evidence, and instructions. Volume 2A, supra, Key Numbers 737, 738, 739, including the Pocket Part.

Sixty years is enough to show that no new or novel Supreme Court procedure on appeal has been applied to petitioner and substantial basis has been shown for its ruling.

In the 1963 Pocket Part of Volume 2A, supra, alone appears about forty decisions. The Bench and Bar of Alabama are well informed as to this appellate procedure, and petitioner had Alabama counsel.

The petitioner has not cited, and in reply brief we challenge counsel to cite, a single Alabama case where the Supreme Court of Alabama has considered joint unrelated assignments of error when any one of them was not well taken.

THE CASES CITED BY PETITIONER

Bolton v. Barnett Lumber Co.

In this case the court exercised its discretion and considered appellant's brief and did not affirm, though it might have, for failure to properly prepare the brief. The court stated, however, that the joint assignments or error must be treated as argued in bulk. It said:

> "This court has consistently held that where several assignments of error are grouped and argued together in brief, and one found to be without merit, the court will not consider the others."

The court then in spite of the brief, which was not properly prepared, considered a *single assignment of error*, which *was properly* assigned. It did not depart from the well settled and applied rule set forth in the next above quoted part of the *Bolton* case.

Guy v. Lancaster

This case involved the court's discretion in considering the brief, but did not involve the joint assignments of error rule.

Madison Limestone Co. v. McDonald

Assignments of error 11, 12 and 13 were treated in this case as sufficient for review though not properly expressed. The case did not involve the joint assignments of error rule.

Thompson v. State

This case was written by the justice who wrote the present opinion. It is on all fours with the present case here considered. We invite the court to read it. It supports exactly *the Respondent's* position.

Shelby County v. Baker

The assignments of error were treated as "somewhat kindred" and therefore without the rule.

Edge v. Bice

This case held that if appellant's brief does not comply with Rule 9 of the Supreme Court rules, but does, however, fairly and helpfully make the points relied upon, the court in its discretion may consider the points on their merits.

It did not involve joint assignments of error, one of which is bad.

Simmons v. Cochran

This, as the above *Edge* case, involved a motion to strike the brief, and in the exercise of its discretion, the court would not do so.

It did not involve joint assignments of error argued in bulk and not kindred.

Christian v. Fidelity and Casualty Co. of New York

This case also written by the justice who wrote the present case in this court. The case held that "all the argued assignments of error in the instant case raised kindred questions."

In the present case written by Justice Merrill they did not.

Brothers v. Brothers

This case related to the failure to number two assignments of error (10th and 11th) and is not applicable here.

Wood v. Wood

This case related to the manner of preparation of appellant's brief and not to joint assignments of error argued in bulk with one having been found bad.

Quinn v. Hannon

Rules 1 and 10, Code 1940, Title 7, Appendix (Ala.), were here involved. The court said:

> "While we might, with justification, order an affirmance for insufficient compliance with these rules, we are inclined to exercise our discretion in the matter and give consideration to appellant's brief."

No joint assignments of error was involved and as here *the brief* was considered.

Bell v. Fulgham

An exercise of the court's discretion in considering in-

formal brief inattentive to rules here involved. It did not involve the treatment of joint assignments of error made and argued in bulk.

Stariha v. Hagood

This case involved waiver of assignments of error. The rule applied by the court in this case was not involved.

Kendall Alabama Co. v. City of Fort Payne

This case did not involve the rule applied in the case here on certiorari.

City of Montgomery v. Mott

The assignments were not referred to by number in this case, obviously not involving the joint assignments of error here involved.

State v. Farabee

Involved consideration of brief in discretion of the court that did not comply with part of rule not involved here. It did not involve consideration of joint assignments of error argued in bulk.

Brooks v. Everett

None of the assignments of error were specifically referred to in appellant's brief. Here court exercised its discretion and considered matters not involved in a joint assignment of errors argued in bulk.

Conclusion

The Supreme Court of Alabama has consistently applied to others the rule applied to petitioner. No case from Alabama has been cited to the contrary. This case does not involve contrary decisions by the court on the same point involved. It is unlike *N.A.A.C.P. v. Alabama*, 357 U.S. 449.

It is significant that no appellant in the one hundred fifty or more cases decided by the Supreme Court of Alabama has ever applied to this court as far as we know for certiorari on the ground that the rule of the Alabama court which requires all joint assignments of error to be good or none will be considered is violative of any Federal constitutional right. *Martin v. Walton*, 368 U.S. 25, 7 L.Ed. 2d.5.

Three-fourths of petitioner's brief relates to the merits. The merits of the case are not presented. No construction of Alabama's foreign corporation statutes has been made by the Supreme Court of Alabama as being applicable to petitioner. Until this determination is made, no constitutional questions can be said to be before this court. *Sage Stores Co. v. State of Kansas ex rel. Mitchell*, 323 U.S. 32; *United States v. Burnison*, 339 U.S. 87.

In fact on the merits no constitutional question is presented. *State ex rel. Griffith v. Knights of Ku Klux Klan*, 117 Kan. 564, 232, P. 254.

The above case is exactly in point and was dismissed on appeal by this court for want of a Federal question. 47 S.Ct. 458, 71 L.Ed. 829.

Respectfully submitted,

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State of Alabama

Gordon Madison, As
Assistant Attorney General
State of Alabama

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Gordon Madison, as Assistant Attorney General of the State of Alabama, one of the attorneys for the respondent herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of February, 1964, I served a copy of the foregoing Brief for Respondent on Robert L. Carter, Esq., 20 West 40th Street, New York, 18, New York; Maria L. Marcus, 20 West 40th Street, New York 18, New York; Fred D. Gray, Esq., 34 North Perry Street, Montgomery Alabama; Arthur D. Shores, Esq., 1527 Fifth Ave., North, Birmingham, Alabama, attorneys of record for petitioner, by mailing copies in duly addressed envelopes with first-class postage prepaid, and airmail where required.

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In the

SUPREME COURT OF THE UNITED STATES

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No. 169

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, A Corporation

Petitioner

v.

STATE OF ALABAMA ex rel. RICHMOND M. FLOWERS
Attorney General of the State of Alabama

Respondent

BRIEF FOR RESPONDENT ON THE MERITS

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v.

STATE OF ALABAMA ex rel. RICHMOND M. FLOWERS

Attorney General of the State of Alabama

Respondent

BRIEF FOR RESPONDENT ON THE MERITS

STATEMENT OF THE CASE

On June 1, 1956, the State of Alabama, on the relation of John Patterson, Attorney General of the State of Alabama, filed a suit against the National Association for the Advancement of Colored People, a New York Corporation, in the Circuit Court of Montgomery County, Alabama, in Equity (R. 1).

The suit prayed for a temporary and permanent injunction restraining the said corporation from doing intrastate business in the State of Alabama and for an order on final hearing ousting petitioner corporation from organizing or controlling any chapters of petitioner in Alabama and from exercising any of its corporate functions in the State of Alabama (R. 4).

The temporary injunction was granted, and during its pendency certain contempt proceedings were instituted against petitioner, not pertinent here, except for historical purposes. The litigation with reference thereto may be found in 265 Ala. 356; 265 Ala. 349; 268 Ala. 531; 268 Ala. 504; 271 Ala. 33; 353 U.S. 972; 357 U.S. 449; and 380 U.S. 240.

A suit was filed by petitioner in the Federal Court seeking to have that court adjudicate the merits of this present action and to restrain the State Circuit Court from further proceeding with it. This relief was denied, but the State Court in effect was ordered to try the merits of the action and the motion to dissolve the temporary injunction by January 2, 1962. The memorandum opinion of the Supreme Court of the United States is reported in 368 U.S. 16, and is as follows:

> "October 23, 1961. Per Curiam: The Petition for Writ of Certiorari is granted. The judgment below is vacated, and the case is remanded to the Court of Appeals with instructions to direct the District Court to proceed with the trial of the issues in this action unless within a reasonable time, no later than January 2, 1962, the State of Alabama shall have accorded to petitioner an opportunity to be heard on its motion to dissolve the state restraining order of June 1, 1956, and upon the merits of the action in which such order was issued. Pending the final determination of all proceedings in the state action, the District Court is authorized to retain jurisdiction over the federal action and to take such steps as may appear necessary and appropriate to assure a prompt disposition of all issues involved in, or connected with, the state action. Truax v. Corrigan, 257 U.S. 312, 331-334, 66 L.Ed. 254, 262, 263, 42 S.Ct. 124, 27 ALR 375.
>
> "Mr. Justice Stewart took no part in the consideration or decision of this case."

Starting on December 27, 1961, and ending December 29, 1961, the said Circuit Court did try the issues directed to be tried by the Supreme Court of the United States, and on final hearing *dissolved the temporary injunction,* but issued a permanent injunction against petitioner, its agents, servants, etc., enjoining and restraining them from conducting intrastate business and activities of any kind and ousting petitioner from the State of Alabama. The decree of the Court was entered on December 29, 1961 (R. 209).

It was from the decree entered by the State Court on December 29, 1961 that petitioner appealed to the Supreme Court of Alabama.

On appeal the Supreme Court of Alabama affirmed the State Circuit Court without reaching the merits (R. 221, 229).

This Court has granted certiorari, and oral argument before the Court was made March 24, 1964.

REASON FOR SUPREME COURT OF ALABAMA ACTION

The Supreme Court of Alabama has a rule relative to the assignments of error on appeal. It is as follows:

> "In assigning errors, it shall be sufficient to state concisely, in writing, in what the error consists. Such assignments shall be written or typed upon transcript paper and bound with the transcript, and shall bear the certificate of the appellant, or his counsel, that a copy of the same has been served upon the appellee or his counsel. The words, 'There is no error in the record' written or typed following the assignments of error, or contained in appellee's brief, shall be sufficient joinder in error." (Title 7, page 1154, Recompiled Code of Alabama 1958)

This rule is to apprise the appellate court of the specific questions, raised by specified errors asserted by the appellant, presented for its consideration; and to inform the opposite party of the matters of errors relied on, so that discussion may be limited and concentrated. *Jones v. Adkins*, 151 Ala. 316, 44 So. 53; *Kinnon v. Louisville and Nashville Railroad Co.*, 187 Ala. 480, 481, 65 So. 397. Precision is of the essence of this rule. *Witzel v. Hobbs*, 249 Ala. 431, 31 So.2d 639.

Either from its interpretation of Rule 9, set forth in respondent's brief already on file, or by court decision, it has been a long-standing rule that when one of several unrelated joint assignments of error is not well taken, all must fail. *Dobson v. Deason*, 258 Ala. 219, 61 So.2d 764; *Alabama Chemical Co. v. Hall*, 212 Ala. 8, 10, 101 So. 456.

It has been repeatedly held that assignments of error that judgment and decree are "contrary to the law" or "contrary to the weight of the evidence" or "contrary to the evidence and the law" are not proper assignments of error and when joined with others, it renders them all bad. *Thompson v. State*, 267 Ala. 22, 99 So.2d 198; *Bertolla v. Kaiser*, 267 Ala. 435, 103 So.2d 736.

It is beyond question that the Supreme Court of Alabama has properly applied its own rules to petitioner just as it has to other litigants. The reasons for the rules are plainly stated in the opinions of the Supreme Court of Alabama. Those reasons, from the Federal constitutional standpoint, are either good or bad. Only recently this Court in *Martin v. Walton*, 368 U.S. 25, stated:

> "We cannot disregard the reasons given by the Kansas Supreme Court for the Rules in question. . . . Nor does the fact that the Rules may result "in incidental individual inequality make them offensive to the Fourteenth Amendment. . . ."

This office does not question the power of the United States Supreme Court. It is mighty. But should this Court "by-pass" or "short circuit" the Supreme Court of Alabama?

We respectfully contend that the State Circuit Court decree is not now the final decree by the highest State Court, for the Supreme Court of Alabama is still available if this case is reversed, for decision on the merits, and that Court is the highest Court in this State. 28 USCA, Section 1257; *Fisher v. Perkins*, 122 U.S. 522.

We again restate the applicable law stated in our original brief:

> "It rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local law; and state courts may refuse to consider a Federal claim if the appellant violates reasonable state rules of procedure."

Are the Alabama Supreme Court rules of procedure and practice as applied in this case reasonable?

That should be the question before this Court, and if decided against respondent, the case should be sent back to the State Supreme Court for decision on the merits. *Zorach v. Clauson*, 343 U.S. 306; *Congress of Industrial Organizations v. McAdory*, 325 U. S. 472; *Wilson v. Loew's Incorporated*, 355 U.S. 597; *Parker v. Illinois*, 333 U.S. 571; *Fox River Paper Co. v. Railroad Commission*, 274 U.S. 651, 655.

Any other course will result in an exception for the benefit of NAACP and the application to respondent of a practice seldom, if ever, used.

QUESTION PRESENTED ON THE MERITS

Did the State Court err in enjoining petitioner from doing intrastate business in the State of Alabama and ousting it from the State?

BASIS FOR SUIT

The petitioner, a foreign corporation, has been doing business in the State of Alabama without complying with Alabama law.

The applicable statutory provisions are set forth on pages 2, 3, and 4 of petitioner's brief. We add here Section 232, Constitution of Alabama 1901, as follows:

> "No foreign corporation shall do any business in this state without having at least one known place of business and an authorized agent or agents therein, and without filing with the secretary of state a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the state. The legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this state. Strictly benevolent, educational, or religious corporations shall not be required to pay such a tax."

In addition, respondent claimed that petitioner has been engaging in business and activities not permitted by its charter or articles of incorporation and other acts set forth in the "proof" section of this brief contrary to the laws, customs and morals of the people of Alabama so as to render it undesirable to be licensed to do business in this State.

The record also shows that Mr. W. C. Patton, President and Executive Secretary in Alabama for petitioner, testified that he helped organize Alabama State Coordinating Association for Registration and Voting. This was in 1957 after petitioner had been enjoined from doing business in Alabama in 1956; that Mr. Thurgood Marshall and Mr. Roy Wilkins had nothing to do with this corporation. There is evidence, however, of hundreds of phone calls from Mr. Patton to Mr. Wilkins and Mr. Marshall and many heads or former heads of local chapters in Alabama from 1956 on and from which a strong inference may be drawn that petitioner continued to do business in Alabama, after being enjoined in 1956, through Mr. Patton and the Alabama State coordinating Association for Registration and Voting (S Ct. R., p. 93).

PROOF

The references now made to the record are to the three-volume record filed in the Supreme Court of Alabama and now by copy before this Court for its use.

The certificate of incorporation of petitioner provides as the principal objects the following:

> "That the principal objects for which the corporation is formed are voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law." (R. 6)

Mr. *Roy Wilkins*, the Executive Secretary of petitioner, testified that petitioner had functioned and had chapters in Alabama from 1918 until June 1, 1956; that it ceased operations under the order issued by the Court by way of a tem-

porary injunction dated June 1, 1956; that prior to 1956 petitioner had about twelve thousand members in Alabama and about twenty to twenty-five chapters; that the principal objectives of petitioner as set forth in its certificate of incorporation were pursued through its branches in the State of Alabama prior to the year 1956 (R. 683 through 690).

Mr. *Charles G. Gomillion*, Alabama life member of petitioner, testified that petitioner engaged in facilitating and encouraging voting in Alabama; also defense of certain citizens accused of crime; that annual membership campaigns were conducted and dues collected, all in accordance with the constitution of the national organization and the purposes for which it was organized (R. 742).

Mr. *W. C. Patton*, as Executive Secretary, president of a branch at one time, and president of the Alabama Conference of petitioner, testified that he helped to get membership and raise funds; organized branches following the form of constitution and by-laws that was recommended by the national organization (R. 449, 450, 454).

In addition, it was admitted by petitioner's answer that it was a New York corporation; that it maintained its Southeastern Regional Office in Birmingham, Alabama, was listed in the Birmingham telephone directory and had its name on its office door; that it hired and employed both agents and servants to operate its offices; that it furnished legal counsel to represent Arthurine Lucy in her proceedings against the officials and trustees of the University of Alabama in the Federal District Court for the Northern District of Alabama to obtain admission as a student to that university (R. 3, 32, 33).

Petitioner admitted that it had given moral and financial support to Negro residents of Montgomery in connection

with their refusal to use the public transportation system and furnished legal counsel for Rev. M. L. King (R. 33, 677).

The Rev. King was convicted of violating the boycott statute (R. 626 through 635). Petitioner aided and abetted an illegal boycott.

The conduct of petitioner and its counsel in Alabama is also shown by Judge Groom's opinion in the *Lucy* case beginning on page 396 of the record.

Trustees and officials of a state educational institution were charged by counsel furnished by petitioner with conduct which, if sustained, would constitute a violation of the criminal conspiracy statutes of the State of Alabama and those against riots and mobs, also the Federal statute set forth in Title 18, U.S.C.A., Sec. 241 (R. 406).

These charges were false and known to be false by NAACP counsel. These false charges were broadcast to the world over television and radio at a conference in petitioner's Southeastern Regional Office, Birmingham, Alabama, called by NAACP counsel for that purpose. After the harm had been done, the charges were withdrawn (R. 396 through 499).

ARGUMENT

The Constitution and statutes of Alabama relating to qualification in the state to do business by foreign corporation apply to all corporations except those organized under the laws of the United States and those engaged in transacting business of interstate commerce only within this state (page 4, petitioner's brief).

Under Section 232, Constitution of Alabama 1901, supra,

strictly benevolent, educational, or religious corporations shall not be required to pay franchise taxes, but all are required to follow the other applicable provisions for qualification before doing business of an intrastate character in this state.

If a foreign corporation transacts some substantial part of its ordinary business within a state which it was organized to transact, it is "doing business." *Spurlock v. J. T. Knight & Son*, 244 Ala. 364; *Ford Motor Co. v. Hall Auto. Co.*, 226 Ala. 385.

This test is fully met by the proof in this case; indeed, it is not denied. The gravity with which Alabama regards "doing business" without first qualifying as provided by law is evidenced by the provisions of the statute providing for forfeiture and payment to the state of one thousand dollars for each offense. *Kansas City Structural Steel Co. v. Arkansa*, 269 U.S. 148. This statute is as follows (Title 10, Section 21(93), Pocket Part, Code of Alabama 1958):

> "It is unlawful for *any* foreign corporation to engage in or transact any business in this state before complying with provisions of the two preceding sections; and any such corporation that engages in or transacts any business in this state without complying with the provisions of the two preceding sections shall, for each offense, forfeit and pay to the state the sum of one thousand dollars." [Emphasis supplied]

The state under authority of the following cases brought suit to enjoin petitioner from its unlawful acts and to oust it from the State of Alabama. *Standard Oil of Indiana v. State of Missouri*, 224 U.S. 270; *State ex rel. v. Family Loan Co.*, 167 Tenn. 654, 73 S.W. 2d 157; *State v. Standard Oil Co.*, 120 Tenn. 86, 110 S.W. 565; *MacGenniss v. Boston, etc.*, 29 Mont. 428, 75 Pac. 89; *Northwest Ready Roofing Co. v.*

Ames, 117 Neb. 121, 219 N.W. 848; *Griffith v. Knights of Ku Klux Klan*, 117 Kan. 564, 232 P. 254, 37 A.L.R. 1267; 23 AM.Jur., Section 472, page 455; 20 C.J.S., Section 1843. pages 63, 64.

It is clear beyond question that when the United States Supreme Court ordered a trial of this case on the merits, it recognized the right of the state to bring the action in the first instance. It would not order the trial of a case which the State of Alabama had no authority to bring.

In *Paul v. Virginia*, 75 U.S., 8 Wall 168, 181, it was stated with reference to foreign corporations:

> ". . . the recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states, a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. *They may exclude the foreign corporation entirely;* they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion." [Emphasis supplied]

This doctrine has been so frequently declared by the Supreme Court of the United States that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest, said this Court in *Horn Silver Mining Co. v. State of New York*, 143 U.S. 305.

In *Horn*, two exceptions were pointed out; one that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce; and the other, where the corporation is in the employ of the general government.

In addition, other cases are cited as *Interstate Amusement Co. v. Albert*, 239 U.S. 560; and *Crescent Cotton Oil Co. v. Mississippi*, 257 U.S. 129, the latter saying, ". . . even to the extent of excluding it altogether." *Atlanta Refining Co. v. Virginia*, 302 U.S. 22; *American Fire Insurance Co. v. King Lumber and Manufacturing Co.*, 250 U.S. 2, 23 Am. Jur., Foreign Corporations, Sections 15, 20, 25; *Warefield v. Gaston*, 161 Ala. 672; *Armour Packing Co v. Vinegar Bend Lumber Co.*, 149 Ala. 205; *State v. Atlantic Coastline R. Co.* 202 Ala. 558; *Hitchcock v. Bank of United States*, 7 Ala. 386; *Simonetti Bros. Produce Co. v. Peter Fox Brewing Co.*, 240 Ala. 91.

However, even more strikingly in point with the case at bar, are three cases sustaining the power of the state to regulate another membership corporation whose charter also contains statements of worthy aims and ends, namely, *The Knights of the Ku Klux Klan*. The cases are, *State ex rel. Griffith v. Knights of the Ku Klux Klan*, 117 Kan. 564, 232 P. 254; *Knights of the Ku Klux Klan v. Commonwealth*, 138 Va. 500, 122 S.E. 122; and *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63. The petitioner would have it that these cases may be explained on the basis of judicial notice that the Klan is an organization based upon bigotry and committed to violence. Similarly, this Court is asked to take judicial notice of the noble character and purpose of petitioner.

The striking similarity of Kansas' successful action against the Ku Klux Klan to that which Alabama commenced against this recalcitrant corporation, is immediately

evident. The Supreme Court of Kansas outlined, on the basis of a Commissioner's report, the activities of the Klan in Kansas. It sustained the ouster of the Klan, even though it was a membership corporation, while expressly accepting the commissioner's finding that the evidence was insufficient to show that the Klan engaged in violence and intimidation. The assertion of the right of Kansas to regulate and oust nonprofit membership corporations doing business within its borders is clearly upheld. This case merits the careful consideration of this Court for on appeal to this court it was dismissed for *want of a Federal question. Knights of the Ku Klux Klan v. State of Kansas ex rel. Charles B. Griffith, Attorney General*, 47 S. Ct. 458, 71 L.Ed. 829.

The United States Constitution protects the Klan just as it does petitioner, yet this Court could find no Federal question when the State of Kansas by court action, just as here, ousted the Klan from that state.

CONCLUSION

We submit that the action of the State of Alabama and the decrees of the state courts in this case are all in compliance with state law, decisions of other high courts and, in accordance with permissible decisions of this Court.

No Federal questions of a substantial nature are involved. It is not a race case, both white and Negro belong to petitioner's organization, and by the very purposes of its charter it is supposed to operate to promote equality of right and eradicate caste or race prejudice among citizens of the United States. There is plenty of prejudice on the part of the Negro against the white man, but according to petitioner's brief its sole purpose is the elimination of racial discrimination and segregation and the establishment of

full-fledged citizenship status for Negroes only throughout the United States (Brief, pp. 25, 26).

It is petitioner who resisted the disclosure of its membership lists. It is petitioner who decided to litigate the contempt case rather than disclose its membership. It is petitioner who did not press for trial on the merits while the contempt case was being litigated, although it could have done so. *Board of Revenue of Covington County v. Merrill*, 193 Ala. 521, 68 So. 971; *McCollum v. Birmingham Post Co.*, 65 So.2d 689. It is petitioner who repeatedly requested the state court to give it more time to answer interrogatories (See Respondent's Memorandum in Opposition, Case No. 303). It is petitioner who has filed suit in the Federal District Court. It is petitioner who again started the cry of delay in the Supreme Court of Alabama and in the Federal District Court. The Supreme Court of Alabama and Judge Johnson in the Federal District Court answered effectively these assertions in the opinions shown on pages 9a, 10, and 55a of petitioner's brief on certiorari. On page 55a of petitioner's brief in support of certiorari, the opinion of Federal Judge Johnson is shown and he there stated, "As this Court understands the matter, there is no contention on the part of plaintiff association that the courts for the State of Alabama have not expeditiously handled the case since the action of the Federal appellate courts and the order of this Court of December 13, 1961."

It is petitioner who has violated the laws of the State of Alabama and maligned its servants and agents, including charges against the Attorney General, Circuit Court Judge, and the Supreme Court of Alabama, yet places blame on the State of Alabama.

Petitioner did not step up its activity in Alabama until its

Southeastern Regional office was established in 1951 (petitioner's brief, page 8). Its unlawful activity in Alabama is a continuing offense (Title 10, Section 21(93) Pocket Part, Code of Alabama 1958, supra).

The claim of laches is without merit (See concurring opinion, *Klan* case, supra).

The case on its merit should be affirmed.

Respectfully submitted,

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Attorney General of Alabama

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State Capitol
Montgomery 4, Alabama

Counsel for Respondent

CERTIFICATE OF SERVICE

I, Gordon Madison, as Assistant Attorney General of the State of Alabama, one of the attorneys for the respondent herein and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ..... day of April, 1964, I served a copy of the foregoing Brief for Respondent on the Merits on Robert L. Carter, Esq., 20 West 40th Street, New York, 18, New York; Maria L. Marcus, 20 West 40th Street, New York, 18, New York; Fred D. Gray, Esq., 34 North Perry Street, Montgomery, Alabama; Arthur D. Shores, Esq., 1527 Fifth Avenue, North, Birmingham, Alabama, attorneys of record for petitioner, by mailing copies in duly addressed envelopes with first-class postage prepaid, and airmail where required.

Gordon Madison
Assistant Attorney General
State of Alabama